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December 13, 2011

**VIA HAND DELIVERY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals II  
445 - 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

In re: **MB Docket No. 03-185**

Dear Ms. Dortch

Cohn and Marks LLP filed a Reply to the Opposition to National Public Radio, Inc. on December 8, 2011. Attached hereto are an original and nine copies of a Supplement to the Reply.

Yours very truly



Robert B. Jacobi

RBJ:btc

cc: Mr. Hossein Hashemzadeh  
The Commission

FILED/ACCEPTED

DEC 13 2011

Federal Communications Commission  
Office of the Secretary

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BEFORE THE  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Parts 73 and 74 of the ) MB Docket No. 03-185  
Commission's Rules to Establish Rules )  
for Digital Low Power Television, )  
Television Translator, and Television )  
Booster Stations and to Amend Rules for )  
Digital Class A Television Stations )

To: Office of the Secretary  
Attention: The Commission

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Federal Communications Commission  
Office of the Secretary

**SUPPLEMENT TO REPLY TO NATIONAL PUBLIC RADIO, INC.  
OPPOSITION TO COHN AND MARKS LLP PETITION FOR  
RECONSIDERATION**

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The Cohn and Marks LLP Reply referenced footnote 37 contained in the Second Report and Order (26 FCC Rcd 10732, 10739 (2011)), which stated, "We note that this change in expiration date applies only to digital construction permits for existing stations' flash-cut or digital companion channel facilities." The Cohn and Marks LLP Reply asserted that the verbiage "We note. . ." is not a reason for excluding permittees holding construction permits for new digital LPTV facilities from the automatic extension of construction permits and that the Second Report and Order, Ibid., did not provide a reason for excluding a limited class of LPTV permittees.

With respect to the Commission's failure to provide a reason for the exclusion, the Commission's attention is directed to a long-standing Court of Appeals decision

mandating that the Commission provide an explanation for its reasons (Melody Music, Inc. v. Federal Communications Commission, 345 F.2d 730, 732-733 (1965):

“We think the Commission’s refusal at least to explain its different treatment of Appellant and NBC was error. . . Whatever action the Commission takes on remand, it must explain its reasons and do more than enumerate factual differences, if any, between appellant and the other cases; it must explain the relevance of those differences to the purpose of the Federal Communications Act.”

“We Note” does not meet the Melody Music mandate. The Second Report and Order, Ibid., failed to enumerate factual differences, failed to provide or explain the reasons for the “We Note” in footnote 37 and failed to explain the reasons for different treatment accorded to the respective classes of permittees contrary to the explicit Melody Music precedent.<sup>1</sup>

Respectfully submitted



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Dated: December 13, 2011

<sup>1</sup> Page 3, line 10 of the Reply contains a typographical error: The word “conversation” should be “conversion.”

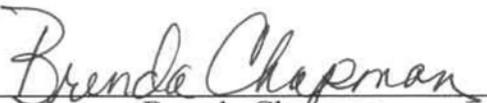
**CERTIFICATE OF SERVICE**

I, Brenda Chapman, hereby certify that on this 13<sup>th</sup> day of December, 2011, a copy of the foregoing "Supplement to Reply to National Public Radio, Inc. Opposition to Cohn and Marks LLP Petition for Reconsideration" was delivered via first class, U.S. mail, postage prepaid to the following:

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Brenda Chapman