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December 8, 2011

VIA HAND DELIVERY

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

In re: MB Docket No. 03-185

Dear Ms. Dortch

On behalf of Cohn and Marks LLP's clients holding construction permits for new digital low power television facilities, there are herewith transmitted an original and nine copies of a Reply to the Opposition of National Public Radio, Inc.

Yours very truly


Robert B. Jacobi

RBJ:btc

Enclosures

cc: Mr. Hossein Hashemzadeh
The Commissioners

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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)

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To: Office of the Secretary
Attention: The Commission

Federal Communications Commission
Office of the Secretary

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

The Second Report and Order (26 FCC Rcd 10732 (2011)) established a "hard date" (September 1, 2015) for the completion of low power television (LPTV) to digital and granted only to existing LPTV analog licensees holding digital construction permits automatic extension of the outstanding constructions to September 1, 2015. The reasons for granting the automatic extension are set forth in paragraphs 7-11, 14 of the Second Report and Order, Ibid., pages 10735-740. Briefly stated, the reasons for granting the extension were as follows:

Paragraph 7: completion of full-power television transition;

- Paragraph 8: the financial risks, “. . . when such facilities may have to be substantially modified due to channel displacement or taken off the air altogether in connection with the implementation of a spectrum repacking scheme.”;¹
- Paragraph 9: to provide sufficient time for LPTV stations “. . . to determine the best location,” to file modification applications (and the time period associated with modification), to complete the “. . . other necessary steps toward the transition”;
- Paragraph 10: to ensure the benefits of digital technology and to “. . . allow low power television stations to have better understanding of the overall spectrum landscape when determining their final transition plan. . .”;
- Paragraph 11: the specification of a “hard date” in mid-summer “. . . will maximize available construction time and minimize weather-related disruptions”;
- Paragraph 14: Fairness: “We conclude that fairness dictates that stations with outstanding digital construction permits set to expire in the coming months or years be given until September 1, 2015 to complete their digital facilities. . . we do not believe that stations should be forced to transition before they are truly prepared to do so simply because their digital construction permits are set to expire.”

The above-referenced rationale for the September 1, 2015 extension factually is equally applicable to ALL outstanding LPTV digital construction permit. Indeed, NO REASON for excluding ALL LPTV outstanding construction permits is provided, other than a wholly unsupported footnote (footnote 37), “We note that this change in expiration date applies only to digital construction permits for existing stations’ flash-cut or digital companion channel facilities” (Second Report and Order, Ibid., page 10739). The verbiage “We note” IS NOT a reason for limiting the extension and particularly in the

¹ The financial risk for the permittees of new digital facilities is greater than the risk for permittees converting from analog to digital. The transmitter site, the antenna, studio equipment and the transmission line used for analog operation (or portions thereof) potentially can be used for digital operation.

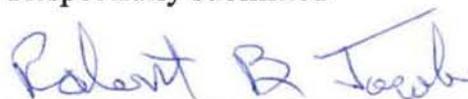
situation where the reasons FOR extension are equally applicable to all outstanding LPTV construction permits.

National Public Radio, Inc. (“NPR”) asserts that the permittees of the construction permits excluded from the automatic extension filed applications “...with the understanding that it had 3 years to complete construction” and that “...the 3-year period for constructing a new, digital-only facility is exactly what the permittee expected when it applied to construct the facility.” The same “understanding” and the same “expectation” were and are applicable to those permittees who filed applications to convert from analog to digital. Insofar as “understanding” and “expectation,” in-core applicants (neither for conversion from analog to digital nor for a new digital LPTV station) were NOT FOREWARNED as to prospective adverse implementations resulting from spectrum repacking schemes. The significance of forewarning as a necessity to support Commission policy affecting the out-of-core expiration date is clearly evidenced in the Commission’s defense of the out-of-core December 31, 2011 deadline:

“... low power television stations operating in the 700 MHz band [channels 52-59] have been on notice since the release of the Digital LPTV Order in 2004 that they are secondary to commercial wireless and public safety operations.²⁵ Thus, unlike low power television stations with in-core channels that may never face displacement, low power television stations with out-of-core channels have known that they would ultimately be displaced and should have been prepared to make such adjustments.” (Second Report and Order, Ibid., p. 10747 (Para. 31)) (Footnote omitted).

The Commission provided NO FOREWARNING to the “new” LPTV applicants. The Second Report and Order provides NO legitimate basis for discriminating between existing LPTV analog/digital permittees and new LPTV digital permittees.

Respectfully submitted

A handwritten signature in blue ink that reads "Robert B. Jacobi". The signature is written in a cursive style and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I, Brenda Chapman, hereby certify that on this 8th day of December, 2011, a copy of the foregoing "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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