

-----Original Message-----

From: Richard

Sent: Saturday, October 02, 2004 4:47 AM

To: DiversityFAC

Subject: Diversity Advisory Committee 10/4/04 Meeting

Importance: High

Dear FCC Diversity Advisory Committee:

From a *Public Notice* released September 23, 2004, I was made aware of an upcoming teleconference to be conducted on October 4, 2004, between 3-4 p.m. EDT. One purpose for this meeting is to discuss a nine point proposal/resolution on diversifying ownership in the commercial FM Radio band. The Public Notice stated public participation is available for the teleconference, by contacting Kevin Venters to obtain a number to call. I left a message on the phone recorder, since I'm on Pacific Time, and it was already after regular business hours. My reason for participation is simple - I'm a sole proprietor, designated entity, small business, that can also be considered a new entrant, as I've been seeking to acquire a commercial FM Broadcast license from the Commission since 1998. I am a successful rulemaking petitioner for one of the 288 FM Allotments scheduled for Auction #37, and have an established six year record of pleadings before the Commission, addressing the very issue which your Committee is currently planning to discuss on Monday. I support some of your initiatives presented, yet can offer additional suggestions that have previously been overlooked. I have thoughtfully attached for your review and consideration, in Wordperfect (.wpd) file format, my Section 257 pleading for MB Docket # 04-228, which I just completed and paper filed to the Commission, through the United States Postal Service Priority Mail, on October 1, 2004. I'm confident that I can provide practical insight and advantageous advice during your meeting, and also concisely impart from experience, the difficulties I've encountered as a direct result of current inadequate Commission policies, relating to both market entry barriers and lack of commercial FM Broadcast opportunities for designated entities. Please contact me by phone at home, (702) 878-0773, throughout the weekend or on the day of (Monday), so I can timely receive the correct dial-in participation information for the teleconference. I earnestly look forward to exchanging ideas and solutions, plus appreciate the involvement of your Committee to promote relief and remedy of this blatant deficiency in Commission oversight and regulation.

Sincerely,

Richard Dean Hodson

Richard Dean Hodson d/b/a

HODSON BROADCASTING

520 Monticello Drive

Las Vegas, NV 89107-3616

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Ways to Further Section 257 of the) MB Docket No. 04-228
Telecommunications Act of 1996)
Mandate and To Build on Earlier Studies)

COMMENTS - Table Of Contents

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I. Introduction

Hodson Broadcasting, a sole proprietorship, small business entity, formed by Richard Dean Hodson (hereafter called “Hodson”), pursuant to Sections 1.415, 1.419, and 1.49 of the Commission’s Rules, respectfully submits the following “Comments” in response to the *Public Notice*¹ that spawned this proceeding.

¹See DA 04-1690, *Media Bureau Seeks Comment on Ways to Further Section 257 Mandate and to Build on Earlier Studies*, MB Docket No. 04-228 (MB June 15, 2004). The initial *PN* directed that interested parties may file comments within 30 days after Federal Register publication, and reply comments within 45 days after Federal Register publication. In a subsequent *Public Notice* release, *Comment and Reply Comment Dates Set for Comments on Ways to Further Section 257 Mandate and to Build on Earlier Studies*, DA 04-1758 (MB June 22, 2004), established comment and reply comment deadlines of July 22, 2004, and August 6, 2004, respectively. These filing dates were extended via another *PN*, *Deadlines Extended for Comments and Reply Comments on Ways to Further Section 257 Mandate and to Build on Earlier Studies*, DA 04-2085 (MB July 12, 2004), to September 10, 2004, for comments, and October 8, 2004, for replies. The submission schedule was further extended with yet another *Public Notice*, *Deadlines Further Extended for Comments and Reply Comments on Ways to Further Section 257 Mandate and to Build on Earlier Studies*, DA 04-2906 (MB September 8, 2004), for comments and reply comments, this time to October 12, 2004, and November 8, 2004, respectively. Therefore, Hodson’s Comments in this matter are both timely and properly filed.

The *Notice* seeks comment on Constitutionally permissible ways to further the mandates of Section 257 of the Telecommunications Act of 1996 (“1996 Act”),² 47 U.S.C. § 257, which instructs the Commission to identify and eliminate market entry barriers for small telecommunications businesses, and Section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j), which requires the Commission to further opportunities in the allocation of spectrum-based services for small businesses and businesses owned by women and minorities.

Rather than painstakingly scrutinize the six studies released in December 2000, now concisely referred to as the *Content/Ownership Study*, *Broadcasting Licensing Study*, *Auction Utilization Study*, *Capital Markets and Auctions Regression Study*, *Historical Study*, and the *Advertising Study*, and/or the Supreme Court cases cited, Grutter v. Bollinger, 539 U.S. 306 (2003); and Gratz v. Bollinger, 539 U.S. 244 (2003), Hodson has decided to take another, more simplistic approach to assist Commission staff in this important advancement matter. Hodson carefully did similar such analysis with the twelve Media Ownership Working Group (MOWG) Studies, in its 86 page Reply Comments (received at the Commission on January 29, 2003) for

²See Title I, Part II-Development of Competitive Markets, Telecommunications Act of 1996, Pub. L. No. 104-104, §§ 257(a) and (b), 110 Stat. at 77 (“1996 Act”). In subsection (a), Elimination of Barriers, Congress mandates that the Commission identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services, while subsection (b), National Policy, directs “In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.”

MB Docket # 02-277, the *2002 Biennial Regulatory Review, et al.*, which apparently Commission delegated authorities neither acknowledged nor appreciated in the subsequent *Report & Order*.³

Since Hodson is the epitome of both the small business entrepreneur and designated entity the FCC claims to want to promote and encourage, Hodson will reiterate its professional radio rise and struggles in Southern Nevada since 1986, before creating the sole proprietorship broadcast endeavor. Hodson will also refresh and chronicle its arduous and oppressive journey with the Commission, to inform delegated FCC authorities not familiar with Hodson's long and winding road to eventually become a FM Broadcast licensee. Many of Hodson's recommendations and remedies are brought forth in the FM radio broadcast context, but can be universally adopted throughout other services in which the Commission has jurisdiction, to satisfy Sections 257 and 309(j) mandates. Through examples, experience, and anecdotes, along with reviewing the infra filings noted, and heeding Hodson's practical proposals, the Commission staff should clearly see what needs to be done to accomplish the desired ubiquitous rectifications and competitive rejuvenation for small, disadvantaged, minority, and/or female business concerns and new designated entrants, if this proceeding indeed aspires to accomplish its stated ambitions.

II. History and Development of Hodson Broadcasting

Richard Dean Hodson, born in Dayton, Ohio, on March 30, 1966, and raised in Southern Nevada since 1968, first studied broadcasting during his freshman and

³18 FCC Rcd 13620 (2003).

sophomore years (1980-82) at Bonanza High in Las Vegas. After graduation from high school, Hodson attended Columbia School of Broadcasting, headquartered in Hollywood, California, and received a diploma in radio announcing, maintained a 3.4 G.P.A., honored for Most Dedicated Student in 1986, and completed two and a half years of study in January 1987. On February 28, 1986, a Restricted Radiotelephone Operator Permit was issued to Hodson by the Federal Communications Commission, after which Hodson gained broadcast employment on-the-air at three FMs (KFBI 107.5, KRLV 106.5, KLTN 103.5), two AMs (KVEG 840, KEZD 1230), and three radio networks (Sportsfan, American Sports Radio, and Sports and Entertainment Network), throughout an eighteen year professional career in the Las Vegas market. Hodson has garnered numerous awards and distinctions during this time, including two Employee of the Month recognitions while at KRLV Radio ("Sunny 106.5"), and three bowling trophies while representing KVEG Radio on a Mixed Media league in 1991. From June 1995 - May 1998, Hodson reinforced and supplemented his broadcasting experience with education at the Community College of Southern Nevada (CCSN), and graduated with two Associate of Applied Science Degrees - one in Electronic Engineering, the other in Telecommunications. A 3.89 G.P.A. granted Hodson Phi Theta Kappa Honor Society induction during the Spring of 1996, several consecutive National Dean's List distinctions (1995-96 and 1996-97), plus the 1997 CCSN Outstanding Student Award.

Hodson Broadcasting was first formally founded as a sole proprietorship, by Richard Dean Hodson, in March 1997, through a Certificate of Business filed in the County of Clark, State of Nevada. In August 1997, Hodson bought a Collins ten kilowatt FM transmitter from KWLW Radio in Many, Louisiana, in preparation to commence broadcast operations. After another 18 months of rigorous radio broadcast

research, which included a FCC trip through Washington D.C., Hodson filed with the Commission for an allocation in Tecopa, California, in December 1998.⁴ Channel 291A was added to the FM Table of Allotments for the community of Tecopa, effective August 1999.⁵ In the interim, Hodson registered with the City of Las Vegas in April 1999, for a home-based broadcast business and was issued a license. In February 2000, both the Clark County Planning Commission and the Clark County Board of County Commissioners (CCBCC) approved Hodson for a two-year, special use, construction permit, with both waivers and variances, to develop private family property located in Sandy Valley, Nevada, as a start-up studio site for broadcast operations. However, because of untimely and unjust federal regulatory delays beyond Hodson's control regarding Auction #37, which had seen multiple preauction delays and scheduling postponements for approximately four years,⁶ an Extension of Time application had been filed with Clark County on the above permit decision in February 2002, but was later dismissed by the County in April 2002. Four percent of the entire project's current capital funding was therefore forfeited on this CCBCC undertaking, since Hodson could not answer their one simple question, "When will the FCC make their move concerning the Tecopa Allotment?" On July 26, 2004, Hodson was finally able to file FCC Form 175 during the long awaited filing window that commenced on July 22, 2004, and concluded on August 6, 2004. On page 21 of Attachment A, released with "Auction of FM Broadcast Construction Permits, Status of FCC Form 175 Applications to Participate in Auction No. 37," *Public Notice*, DA 04-2948

⁴MM Docket # 99-46, RM-9470, 14 FCC Rcd 2829 (1999).

⁵*Report and Order*, DA 99-1375, 14 FCC Rcd 11595 (MMB July 16, 1999).

⁶See *Public Notices*: DA 00-2171, 15 FCC Rcd 18081 (MMB/WTB September 25, 2000); DA 01-119, 16 FCC Rcd 928 (MMB/WTB January 19, 2001); DA 01-619, 16 FCC Rcd 5850 (MMB/WTB March 7, 2001); DA 01-2148, 16 FCC Rcd 16479 (MMB/WTB September 14, 2001).

(MB/WTB September 13, 2004) (“*Auction #37 Form 175 Status PN*”), Hodson’s Form 175 was accepted. Hodson cannot currently comment further due to collusion restrictions that are presently in effect for the upcoming Auction #37.

Hodson meets all the established criteria to be regarded as a small business concern, as defined by the Small Business Administration (SBA). *See* 15 U.S.C. § 632(a)(1) and 13 C.F.R. § 121.201 (North American Industry Classification System [NAICS] Code 515112). Hodson is independently owned and operated, not dominant in its field of operation, has \$6 million or less in annual receipts, plus satisfies any and all additional SBA specifications. Hodson also qualifies as a designated entity as codified in 47 C.F.R. § 1.2110(a). Additionally, pursuant to Sections 1.2110(b)(1)(i) and (f)(2)(i) of the Commission’s Rules, Hodson is eligible for very small business/entrepreneur status and any related benefit provisions via size attribution and its minimal average gross revenues over the preceding three years.

III. Disappointment and Dismay in Commission’s Constant Apathetic Attitude Toward Commenting Parties

Hodson has aggressively and consistently advised the Commission since 1998, on issues and ideas that would uniformly be beneficial to both new entrants and small commercial business concerns, which include women, minorities, and/or other entrepreneurs, two categories into which Hodson falls. Furthermore, a good majority of Hodson’s proposals and recommendations are both race and gender neutral, focusing instead upon financial and ownership levels of the particular entity in

question. However, what repetitively results is that these worthwhile suggestions, which would withstand both constitutional and judicial scrutiny, are usually just shrugged off, without being thoughtfully addressed, or perhaps given token consideration by Commission monocrats and then quickly dismissed, without positive action. Hodson has been both a direct victim and interested observer in numerous Commission proceedings where many progressive positions of its own and of others are commonly rebutted by the Commission in one of two ways. Either a commenter is told to “initiate a rulemaking to address the issue,” or “the issue is outside the scope of this proceeding.” How about noncommittal delegated authorities at the Commission, charged with working on behalf of the public interest, convenience, and necessity, initiate a rulemaking on their own motion or choose to expand the scope of a proceeding, when viable issues have merit? Because it would expend extra energy and effort that government personnel do not desire to exert. After all, who wants additional work without additional pay? We have enough active dockets on our plate already, why bother with creating more? Perhaps Commission monocrats find it more simplistic to just outright reject issues, rather than “stick their neck out” in support of a feasible suggestion, and thus jeopardize their job security. These type of apathetic attitudes prevent effective public service and paralyze dynamic regulation and administration of the agency. Hodson firmly believes and adamantly avers that this Section 257 proceeding is destined to also terminate or stagnate without prolific determinations. Why? Let’s examine the record. The six stout studies referenced in the *Notice*, the *Content/Ownership Study*, *Broadcasting Licensing Study*, *Auction Utilization Study*, *Capital Markets and Auctions Regression Study*, *Historical Study*, and the *Advertising Study*, have been in limbo for almost four years, since their release by the Commission in December 2000. The research for them was in response to the

1996 Act, which was four years prior to that. Furthermore, the Minority Media Telecommunications Council⁷ (hereafter called “MMTC”) motioned the Commission two years ago (October 10, 2002) to incorporate these Section 257 Studies into the *2002 Biennial Regulatory Review* (MB Docket # 02-277), *et al.*, alongside the twelve Media Ownership Working Group (MOWG) Studies, but instead was given the cold shoulder by the FCC staff, with the ambiguous decision to address it in a future Docket, which this proceeding “appears” to be. So here we are, eight years after the Section 257 mandate, and in Hodson’s humble opinion, nothing has really been accomplished over this duration of time to assist new entrants or small commercial businesses, regardless of their ownership structure or company principal(s). Perhaps some minor “talking” (token gestures, at best), but no notable “walking” (beneficial actions or conclusions). All Hodson has seen, time and again, is a consistent and pathetic pattern of the Commission’s delegated authority monocrats turning a deaf ear to the public interest and input because “we don’t want extra complications in our workload and we’re going to do whatever *we think* is best anyway,” only later to find their determinations, void of decent discussion and analysis, will not withstand either Congressional nor judicial scrutiny. This repetitively results in additional years of stagnation in the court system without meaningful movement, as has too many other *Memorandum Opinion & Orders* and *Report & Orders* (over just the last decade) to even begin to list in this comment petition.

⁷MMTC should be earnestly commended for fruitfully motioning the Commission for several filing extensions in MB Docket # 04-228, which allows and affords any interested entity that lacks effective resources, including disadvantaged small business concerns, such as Hodson, the additional time needed to prepare and submit their pleadings. Please note that Hodson works independently and does not retain neither professional counsel or outside independent contractors to assist in the research or creation of its formal briefs to the Commission, mainly due to budgetary restrictions. Moreover, Hodson utilizes no volunteers or other personnel to maintain its small business operations, since it was founded in March 1997.

Please prove Hodson's accurate analysis above wrong, as Hodson prays that God, through the Holy Spirit, will inspire the FCC monocrat assigned to this proceeding, with boldness and motivation to sincerely make a difference, and truly accomplish something on behalf of new entrants and designated entities, as already defined and described, opposed to the normal status quo.

IV. Suggestions and Proposals to Assist New Entrants and Designated Entities

Before delving into this Section, Hodson admonishes the responsible delegated authority for this FCC action to do some homework and investigation. Specifically, Hodson strongly recommends that Commission staff search and review, either through the FCC Reference Center (CY-A257) or online at www.fcc.gov, utilizing the Commission's "Search for Filed Comments" portion of their Internet website, certain of Hodson's formal filings, including both Reply Comments (received 1/29/03) and Comments/IRFA Comments (received 2/28/02) in MB Docket # 02-277 and MM Docket #s 00-244, 01-317, and 01-235. Hodson's Auction #37 Comments, which were submitted to the Commission earlier this year, also contain numerous avenues to reduce market entry barriers and offer assistance across-the-board to small business entrepreneurs, but is not located via the Internet, because the *Public Notices*⁸ in that

⁸See DA 04-1020, "Revised Inventory and Auction Start Date for FM Broadcast Construction Permits, Auction Rescheduled for November 3, 2004; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures," 19 FCC Rcd 6907 (MB/WTB 2004) ("2004 Auction #37 Revised Comment PN"). Hodson was one of only eight Auction #37 commenters that cared to file in 2004. See also "Auction of FM Broadcast Construction Permits Scheduled for November 3, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures," DA 04-1699 (MB/WTB June 10, 2004) ("2004 Auction #37 Procedures PN").

proceeding dictated only electronic submissions, via e-mail to auction37@fcc.gov, and a Docket # was never established to enter or review briefs in the FCC's ECFS database. Therefore, Commission staff should locate this particular document in-house, then glean the information and ideas which pertain to small businesses and new entrants (via the combined noted Commission pleadings from Hodson), and incorporate these numerous suggestions and proposals as possible and worthy solutions for the Congressional mandates required by 47 U.S.C. §§ 257 and 309(j).

Because Hodson's *sole mission* in life is to develop and construct a FM Broadcast operation, evaluating entry barriers and other start-up small business obstacles and impacts from Commission policy and regulation on Hodson's venture should be refreshing, but instead has been quite unproductive over the last six years, as referenced supra. Small business "concerns", whether profit or non, have many similar operational company issues as do larger, highly capitalized, organizations. However, a major distinction and stumbling block for most small, private enterprise is financial assets, as it is rarely generated through stock options and public trading, but through private and personal capital of their owners. For instance, if a FM Broadcast license (or any Commission authorization, for that matter) is available for purchase on the secondary market for \$10 million, a "Clear Channel" or similarly situated conglomerate, can effortlessly raise most, if not all, of the capital by issuing additional Wall Street stock certificates, manipulating other diversified assets, or even offering the seller company commodities, in lieu of actual cash, since it has perceived value. On the other hand, a new entrant or sole proprietor like Hodson, who is not otherwise diversified, does not affiliate nor interact with the stock market, and cannot afford the Initial Public Offering (IPO), has very limited options. Either pay \$10 million cash, negotiate a financing deal with seller (not likely if they are seriously wanting to

quickly implement their exit strategy), or forget the transaction. Some choices!

When attempting to overcome extremely high market entry barriers, such as inflated selling prices due to industry consolidation, or spectrum scarcity, especially in the FM commercial band with only 80 non-reserved channels available nationwide, which are recycled and reused from region to region, a broadcast entrepreneur still has only two options: buy or build. The current status of many radio markets within the top 100 prohibit new entrants to participate in purchasing an existing broadcast facility, particularly if that entity's capital is less than \$100,000. The construction option within the top 100 radio markets is also riddled with adversity. The lack of FM spectrum availability in most medium to major radio markets consistently limit and force new commercial broadcast entities to select communities that are usually a minimum of 40 miles or more distant from the market in which they wish to serve. If a start-up business is fortunate enough to have found an area worthy of a new allocation, the distance from market factor usually results in not enough signal strength or advertising revenue to support a fledging radio broadcast operation.

Even amongst the more high profile FCC issues in the last few years, such as indecency and media ownership, a pitiful and embarrassing fact that has been quietly swept under the carpet is that **the Commission has not accepted a commercial FM construction permit application since 1997**, which will soon be eight years ago. Hodson concedes that longstanding and mutually exclusive FCC 301 forms previously tendered, were finally disposed and resolved via 1999's Closed Broadcast Auction #25, which did absolutely nothing to advance hundreds of vacant FM Allotments that have been stagnating at the Commission, one of which (Cal-Nev-Ari) has been trying to get on air for more than eleven years! This backward process contradicts the FCC's directive in the Communication Act of 1934, as amended, which requires that the

Commission regulate and expedite new broadcast services in the public interest.⁹ Acknowledging that the FM band's spectrum is inherently quasi-monopolistic by nature, any potential opportunities for new commercial entrants has been severely hampered over many years, as a result of both the *NPR*¹⁰ court appeals and the universal Congressional auction mandate for spectrum services. As an informative side note, after Hodson thoroughly examined the *NPR* brief,¹¹ it was blatantly obvious that throughout the Circuit Court's opinion, both Judge Tatel and Randolph appeared overly transfixed in the context of § 309(j)(2), with the term "issued." Perhaps a better phrasing would have just been, "...shall not apply to Commission licenses or construction permits-...", omitting the word "issued" entirely and thus simplifying the general language of this Commission regulation.

There is also a very distinct division between small "not for profit" broadcast organizations and smaller commercial broadcast ventures, such as sole proprietorships or partnerships. Religious, educational and other noncommercial broadcast entities have historically always received preferential Commission policy provisions not entitled to their micro commercial counterparts. Several examples include non-profits not being subject to application fees or filing windows, multiple ownership

⁹See 47 U.S.C. § 151. The FCC was created "[f]or the purpose of regulating interstate...communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination...a *rapid, efficient, Nation-wide...wire and radio communication service with adequate facilities at reasonable charges...*(italics added). Hodson submits that the almost eight year drought in accepting commercial FM CP applications is neither rapid nor efficient. Furthermore, competitive bidding generally does not promote "reasonable charges," as this procedure effectively stifles limitless participation by designated small business entities with financially challenged portfolios. Over the last decade, the Commission's position has been to distribute construction permits and licenses to those applicants which value the spectrum the most. This reasoning is flawed, because the Commission should not hinge spectrum worth entirely on monetary and financial value alone, which certainly and currently is the case.

¹⁰See *National Public Radio, Inc. et al., v. FCC*, 254 F.3d 226 (D.C. Cir. 2001).

¹¹*Id.* at 229, 232.

limitations, or competitive bidding (auction) regulations, plus more lenient and relaxed signal coverage and transmitter location requirements, the entire reserved FM band design, and even the more recent Low Power FM developments, just to name a few.

Hodson, along with many similarly situated small commercial broadcast firms, is a small, struggling, start-up, sole proprietorship business, which is oftentimes neglectfully sandwiched between NCE entities, such as National Public Radio and Calvary Satellite Network on the one hand, and commercial conglomerates, such as Clear Channel and Infinity, on the other, that have both lobbying resources to continually promote their agenda, and financial resources to relentlessly squeeze the independent broadcasters out of the industry, plus prohibit and prevent new entrants from market participation. It is extremely important that the Commission not only marginally entertain, but earnestly and effectually support initiatives and other feasibly practical ideas presented by individual enterprises, minority endeavors, and/or very small commercial ventures, as mandated by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-03, 241, 110 Stat. at 857-58, 864-65; and the Regulatory Flexibility Act of 1980, Pub. L. No. 96-354, 94 Stat. 1164. The Regulatory Flexibility Act (5 U.S.C. § 603) requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may, among others, include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

Hodson has already highlighted how secondary market purchases of any Commission licenses, whether AM, FM, TV, PCS, etc. in an already established area, is cost prohibited and impractical for almost all new entrants and designated entrepreneurs. In reality, these disadvantaged and start-up small broadcasters must depend on the Commission to fulfill their destinies, since the FCC is the gatekeeper of the spectrum. Furthermore, because of the Commission's competitive bidding principle superseding comparative hearing procedures in the mid-1990's, due to Congressional directives, it is indeed prudent that Hodson focus deeply on modified ways to balance the general auction playing field, which would benefit small and minority commercial entrepreneurs to effectively and successfully compete, regardless of the service involved in the competitive bidding event.

First, restructuring the New Entrant Bidding Credits¹² from its current 35/25/15 percentile to just a 45/30 percentile ratio would be quite advantageous for first-time, limited or privately financed, broadcast owners that have either minimal (five or less) or do not have any medium of mass communication interests, which better defines and serves the Bidding Credit's intention. Another similarly suggested alteration would repeal the provision contained in Section 1.2110(f)(2)(iii) of the Commission's Rules for the 15% tier, because businesses with \$40 million or more in triennial revenue really don't require or even remotely justify any type of new entrant bidding credit adjustments. However, as a very generous compromise to the supra statement, in Hodson's newly proposed 30% tier, a company could have attributable interest in five or less mass media facilities nationwide, with each outlet possessing no more than \$4 million in annual receipts, and providing financial documentation of such to the Commission, on the strict qualifying condition that this potential bidder lacks any

¹²47 C.F.R. §§ 1.2110(f)(2) and 73.5007(a)

mass communication presence within 250 kilometers (155 miles) of the auctioned community coordinates or plausible service area. If *any* of their facilities have over \$4 million in gross yearly revenue, they would be automatically deemed ineligible for the 30% Bidding Credit. If the same or another business entity also controls or has attributable interest in any broadcast or other service license within 250 kilometers of the service construction permit or license being auctioned, they would likewise be found unacceptable to participate, thus making more opportunity available for a new entrant during the competitive bidding event.

Only those beginning broadcast or other service entities with up to \$1 million in total or annual revenues *and* no license interests or market presence whatsoever, would be entitled to the restructured 45% tier, plus exempt from the bid withdrawal payment provisions codified in 47 C.F.R. § 1.2104(g). Moreover, when a selected small business entity that qualifies for the new 45% tier submits their Form 175 application, the specified discount (45%) should also be applied to that fledgling entity's total upfront payment and related bidding unit eligibility (i.e. a \$55,000.00 prepayment has the effective bidding power of 100,000 units of eligibility). These small commercial business endeavors would also be allowed, at their discretion, to utilize the installment payment plan, pursuant to Section 1.2110(g) of the Commission's Rules. As an attractive alternative installment payment methodology for these designated small business concerns, the winning bidder for either licenses or construction permits, depending on the auction, would ante up, after factoring in the 45 percent reduction in the overall gross amount pledged and the previously submitted upfront payments, enough funding so that the Commission has 20% of the net bid on the auction participant's license(s) and/or construction permit(s) within 30 business days after the close of the auction, before the Commission would accept the applicable

long form CP request for the desired service. To allow these disadvantaged start-up companies a better chance to succeed in their particular business strategies and assist in defraying the hardships and financial strain of facility build-outs, the Commission would collect the 80% balance over the eight year license duration (using FM in this case) under the following payment schedule. Another 10% would be required when the license to cover application (Form 302-FM) is tendered, after construction and program tests are completed. At each anniversary throughout the term of the FM Broadcast license, ten percent more would be due each year until the eighth year, when the obligation would be paid in full. Similar procedures can be adopted for other services that are under the Commission's jurisdiction.

Regarding default criteria guidelines,¹³ Hodson agrees with current applicant certification and "former defaulter" statements, but must directly differ on the 150% down payment as a blanket requirement for all former defaulters, as Section 1.2106(a) of the Commission's Rules currently instructs. Instead, if the required disclosure reflects that a previous defaulter has cured outstanding infractions *and* has remained debt free for at least a decade,¹⁴ then that bidder would just pay the standard fare in lieu of the higher upfront payment. Speaking of upfront payments, the Commission should both encourage baseline participation from any qualified party without discrimination, by utilizing minimum opening bids that should never exceed \$10,000, regardless of service, which would create conditions that permit the marketplace to determine the final price without restriction. Hodson alternately would highly

¹³47 C.F.R. §§ 1.2105(a)(2)(x) and (xi), 1.2106(a)

¹⁴See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d at 1228-29, ¶105. (Commission established applicant misconduct, even if flagrant, should be disregarded when good rehabilitative evidence exists and a decade or more of time has elapsed since incident(s) occurred.)

recommend and seriously support the Commission's recent proposal and suggestion to serve the public interest "by having no minimum opening bid or reserve price."¹⁵

Because of the thorough distribution, infiltration, and penetration of station licenses already amongst the top 10 national radio and television broadcast business conglomerates (i.e. Clear Channel, Infinity, Cumulus, Disney [ABC], General Electric [NBC/Universal], Viacom [CBS], etc.), they should automatically be prohibited through new regulations from participation in competitive bidding events, making way for new entrants and designated small entities. Additionally, as previously specified in Hodson's modified 30% tier, any regional/local service entities with attributable interest in another service or broadcast license (PCS, AM, FM, LPFM, TV, LPTV, etc.) within 250 kilometers of a specified license or construction permit available via auction, would be ineligible to bid on that particular spectrum. This pair of stipulations is paramount because new entrants and small, minority, and/or female owned businesses are willing to commence local operations if given a fair chance, provided they are not outbid and forced aside by capital-rich, publicly-traded, amalgamated companies, that would have the ability to easily subsidize their new auction acquisitions, and further apathetically yet greedily increase their license portfolios, thus blocking other new services and voices into the marketplace. Observing the record, these consolidated corporations have already successfully done this repeatedly in almost all of the top 100 Arbitron radio and Nielsen television markets, and have no intention of subsidizing absent government intervention. Truly only license divestitures, especially in the case of radio with Clear Channel, as Hodson has twice thoughtfully argued within the multiple ownership proceeding and recently

¹⁵See Section III.B., *2004 Auction #37 Revised Comment PN*, 19 FCC Rcd at 6914.

supported by Senator John McCain (R-AZ), would seriously and effectually enable entrepreneurs to even get on the same commercial FM playing field in these already entry barrier laden, spectrum scarce, metropolitan markets.

V. Summary/Conclusion

To summarize, Hodson is both a new entrant in becoming a Commission licensee, and being a small sole proprietorship broadcaster, also a verifiable designated entity. Hodson has patiently lobbied and persistently wrestled with both Commission monocrats and Congressional representatives for over six years, in its solitary mission to construct a FM radio broadcast facility, offering along the way practical proposals and accurate advice to the FCC that would promote and assist entrepreneurs similarly situated with Hodson. Hodson gently guides and instructs delegated Commission authorities, from its extensive experience year after year in going through the FCC's "hoops and pitfalls" to fulfill its lifelong endeavor, and knows firsthand about the various Commission obstacles and roadblocks it has constantly encountered. Hodson dispenses direction, not through lackadaisical Beltway lawyers and counsel, which have their own communication agenda, ulterior reasons to lobby the Commission, and are only spokespeople to their clients basically because of the paycheck, but through its own non-compensated research and diligent pleadings before the FCC. Investigating certain of these briefs, as noted supra, will reveal even more deficiencies in FCC policy and procedure, which truly overburdens and under represents those designated entities that Congress has firmly charged the Commission to encourage and promote.

In conclusion, Hodson provides astute answers to the Commission's inquiries

with reasonable alternatives and viable suggestions, to remedy the current inaction and ineptitude in identifying and eliminating market entry barriers and furthering opportunities for designated small business entities, pursuant to Chapter 47, Sections 257 and 309(j) of the United States Code, and § 1.2110 of the Commission's Rules. Significant economic and general impact on small business concerns by Commission practices and rules can be dramatically minimized by: hastening procedural procrastination and expediting lengthy delays on Commission matters that remain pending after several years; change delegated authority's perspective and position on outright dismissing and/or not addressing worthwhile proposals and suggestions from those commenters that take the time, effort, and thoughtfulness to respond to Public Notices and formal Dockets; increased competitive bidding unit discounts or credits (from 35% to 45%) and installment payment assistance to auction participants that are classified as either a designated entity or broadcast/service newcomers; and tougher scrutiny or plain prohibition for top 10 amalgamated conglomerate licensees that want to participate in auction events.

MB Docket # 04-228, if conducted conscientiously and correctly, without becoming just another status quo, "going through the motions" proceeding, is truly one of the very last times the Commission has to faithfully "get it right" (as Commissioner Copps is so fond of saying) for small, start-up commercial concerns, including disadvantaged, female, and minority entities. Hodson again strongly encourages that staff policymakers will utilize this proceeding to adamantly advance and implacably improve broadcast, telecommunications, and other service provider opportunities for new entrants, entrepreneurs, and similarly situated small businesses, as mandated by Section 257 of the 1996 Act. Therefore, Hodson requests that the Commission heed and adopt the numerous worthy positions and proposals presented in these comments.

Respectfully submitted,

Richard Dean Hodson d/b/a/

HODSON BROADCASTING

Hodson Broadcasting

P.O. Box 66

Tecopa, CA 92389-0066

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