FCC Form 301
NEW(FM), Channel 259A,
Mason, Texas
Munbilla Broadcasting Properties, Ltd.
March 2006

ATTACHMENT TO EXHIBIT 25

Munbilla Broadcasting Properties, Ltd. (*MBPL*), the applicant, is the winning bidder in Auction No. 62 for:

- for Channel 259A at Mason, Texas; and

- Channel 260A at Hunt, Texas.

Accordingly, MBPL is simultaneously submitting two applications for construction permit:

- the application at hand, which seeks a construction permit for a facility to occupy the Mason allotment; and

- a second application for a construction permit, one for a facility to occupy the Hunt allotment.

The application at hand proposes no modification to the Mason allotment, and proposes Class A parameters. The Hunt application, by contrast, proposes to modify the Hunt allotment to Class C3 status via the "one-step upgrade" process. The Hunt application also requests the issuance to MBPL of a construction permit for a Class C3 facility to serve Hunt on Channel 260.

As the Allocation Study that accompanies the present application indicates, the facility proposed in the simultaneously filed Hunt application is short spaced to the Mason allotment's reference point. The Allocation Study also shows that the facility proposed in the simultaneously filed Hunt application is short spaced to the Mason transmitter site specified in the application at hand.

With respect to the proposed Hunt facility, the proposed Mason facility invokes the provisions of § 73.215 of the Commission's Rules, and provides contour protection to the Hunt facility. MBPL's simultaneously filed Hunt application reciprocally invokes the provisions of §

73.215 of the Rules with respect to the application at hand, and provides contour protection to the proposed Mason facility.

The proposed Mason facility's transmitter site is fully spaced both to the existing reference point for Channel 260A at Hunt, and to the reference point for the upgraded Hunt Channel 260C3 allotment specified in the response to Section III-B, FM Engineering, Tech Box, Item 4, of the Hunt application. However, the proposed Hunt facility short-spaces and cannot protect the Mason reference point.

Ordinarily, an application for construction permit must protect the reference point of another allotment, even if one or more applications for construction permit have been filed with respect to that other allotment. The Commission requires protection of the vacant but applied-for allotment's reference point until a construction permit issues for a facility to occupy the currently vacant allotment. See, e.g., Implementation of Section 309(J) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses and Issues Regarding Comparative Broadcast Hearings, 13 FCC Rcd 15920 (1998) at para. 182.

MBPL's simultaneously filed Hunt application does not (and cannot) protect a hypothetical maximum-parameter Class A facility located at the Channel 259A Mason reference point. However, under the unique circumstances that MBPL's pair of applications present, the Hunt application's failure — and its inability — to protect the Channel 259A Mason reference point do not impede either the grant of this (the Mason) application, or the grant of the simultaneously filed Hunt application.

Once the Commission grants the application at hand, no longer will any applicant — neither MBPL, nor anyone else — need to protect the Channel 259A Mason reference point. But until the grant of this Mason application, the Commission will have to protect that reference point. Id. Hence, the Commission may view MBPL's simultaneously filed Hunt application, which does not and which cannot protect the Mason reference point, as a contingent one: contingent upon the grant of the application at hand. 47 C.F.R. 73.3517(e); 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the

Commission's Rules, 14 FCC Rcd 5272 (1999) (*Broadcast Technical Streamlining*) at para. 11.[1]

As the high bidder for both the Hunt and Mason allotments, MBPL is the only party that can file long-form applications for both of those allotments. Hence, this situation is fundamentally different from the pre-auction-era scenario in which one of several, mutually exclusive applications might be linked to an application for another allotment, such as the Hunt application is linked to the application at hand. Further, as Exhibit 3 to this application indicates, MBPL is already a Commission licensee. The Commission has repeatedly passed on MBPL's basic qualifications to hold Commission authorizations. In every instance, the FCC has found MBPLto be basically qualified. Nothing has changed that would impede or even tend to impede the Commission from reaching that same conclusion again, both with respect to the application at hand, and with respect to the Mason application. Further, as the auction rules require, MBPL has tendered further monies to bring its funds on deposit with the FCC up to 20% of the aggregate of MBPL's gross bids for the Hunt and Mason channels.

Accordingly, so long as the two applications advance acceptable technical proposals, the grant of the two applications is assured. The two applications — the application at hand, and the Hunt application — do in fact advance technically acceptable technical proposals.

The proposed Mason facility will provide full city-grade coverage to the community of Mason. The proposed Mason facility will also provide all necessary protection to all existing assignments, all pending applications, and all allotments, including the reference point for Channel 260C3 at Hunt specified in the Hunt application. The proposed Mason facility also complies with all of the Commission's other technical requirements.

Similarly, the facility proposed in the Hunt application will provide full city-grade coverage to the community of Hunt. The proposed Hunt facility will also provide all necessary protection to all existing assignments, all pending applications, and all allotments — other than the reference point for Channel 259A at Mason. As required, the Hunt application specifies a fully-spaced reference point for the upgraded Channel 260C3 allotment to Hunt. Finally, the proposed Hunt facility complies with all other applicable technical requirements.

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[1]"An application is 'contingent' when it cannot be granted unless and until a second application, also pending before the Commission, is granted."

In Broadcast Technical Streamlining, supra, the Commission amended the contingent-application rule, § 73.3517, by adding a new subsection (e), to allow parties to submit up to ***four*** "related" minor change FM construction permit applications, including one-step upgrade and downgrade applications. Id. at para. 14. Here, there are ***only two*** related applications.

Such applications must meet certain requirements:

- Revised § 73.3517(e) requires that each application state that it is filed as part of a related group of applications to make changes in facilities. MBPL hereby so states. The related group of applications comprises the application at hand and the simultaneously filed Hunt application.

- As noted above, revised § 73.3517(e) limits the related-application group to no more than four applications. As also noted above, the related-application group comprises two applications: the application at hand; and the simultaneously filed Hunt application.

- Revised § 73.3517(e) also requires that each application that is part of the related group cross-reference each of the other related applications. MBPL hereby expressly cross-references the simultaneously filed Hunt application.

- Revised § 73.3517(e) also requires that each application include a copy of the agreement to undertake the coordinated facility modifications. Here, there is no agreement, and no consideration passing from one applicant to another, simply because MBPL is the applicant filing both of the two applications that comprise the related group. It is logically and practicably impossible for MBPL to agree with itself and to compensate itself. However, the fact that MBPL has filed both applications clearly evinces MBPL's ardent desire to obtain construction permits containing parameters exactly corresponding to those specified in the relevant one of the two applications that form the related group.

- Revised § 73.3517(e) also requires that all applications in a related must be filed on the same date. MBPL is satisfying that requirement.

MBPL requests that the two applications be processed together and granted simultaneously.

In Broadcast Technical Streamlining, supra, the Commission realized that, in relaxing § 73.3517(e) to allow such group filings, it was breaking new ground. The Commission was understandably concerned that too sweeping a rule change might cause significant problems. Accordingly, the Commission deemed it prudent to proceed gradually, and to limit the scope of the new procedure in various ways. Among the limitations that the Commission adopted were:

- that only licensees or permittees could participate in interrelated-application-group filings; and

- that the group filings include only minor-change applications, and not any major change applications.

Id. at para. 14.

Although MBPL is the licensee of several facilities, both the application at hand and the simultaneously filed Mason application are applications for construction permits for new facilities. Notwithstanding, the Commission should accept the two applications for filing, and simultaneously process and grant them. As noted above, MBPL is the high bidder for both the Mason and Hunt allotments. Accordingly, MBPL is the only party that can file long-form applications for both of those allotments. Hence, this situation is fundamentally different from the pre-auction-era scenario in which one of several, mutually exclusive applications might be linked to an application for another allotment, such as the Hunt application is linked to the application at hand.

Also, the minor-change limitation was based on the Commission's, "... belie[f] that it is prudent to limit the scope of these new procedures, both to limit the potential for significant service losses and/or disruptions and to ensure that there is sufficient staff to complete review of interrelated proposals expeditiously. Thus, we exclude major change applications."

MBPL's present pair of applications do not offend such concerns. The two applications demonstrate, once again, that MBPL is basically qualified to hold FCC authorizations. The two applications also advance straightforward and acceptable technical proposals. Relative to two

applications that MBPL theoretically could file — one for Class A facilities at the Channel 259A Mason reference point, and the other for Class A facilities at the Channel 260A Hunt reference point, the present pair of application represent minor changes.

Moreover, accepting the present pair of applications will actually lead to a more efficient use of scarce Commission processing resources. MBPL could obtain the same result by serially filing and prosecuting two different pairs of construction permit applications... first one pair, and then, after the Commission grants the first pair, a second pair of applications.

The first pair would be for Channel 259A at the Mason reference point, and for Channel 260A at the Channel 260A Hunt reference point. Neither member of the first pair would be contingent upon the grant of the other member, and neither application would invoke contour protection. The second pair, filed immediately after the grant of the first pair, would propose technical parameters identical to those presently before the Commission. But such a two-step approach would waste both time and Commission resources. Allowing MBPL to achieve the same result by filing and obtaining grants of a single pair of applications — the present pair of applications — will result in the more expeditious introduction of new broadcast services to the people of Hunt and the people of Mason. This will clearly serve the public interest.

The present pair of applications do not propose any loss or disruption of service, because they seek to fill vacant allotments. (Not even wholesale removal of both channels, and their moves to different communities, would trigger loss-of-service concerns. See, e.g., Linden, Texas et al., 16 FCC Rcd 10853 (MMB 2001)).

The grant of the present pair of applications will result, in addition to the accelerated introduction of new broadcast services to the public, the more efficient use of the spectrum, in furtherance of the goals of Section 307(b) of the Communications Act, as amended, 47 U.S.C. § 307(b). In allotment and licensing decisions, Section 307(b) considerations are of paramount importance. Endicott, New York, 51 FCC 2d 50, 51 (1975).

To the extent that the Commission believes that grant of the present pair of applications requires any waiver of § 73.3517 of the Rules, MBPL hereby respectfully requests the same. When faced with a waiver request, the Commission must first identify the core public-interest considerations that underlie the relevant rule, and then must determine whether, under the unique

facts of the case, whether the core public-interest considerations would be better served by waiver of the rule, or by the rule's application. WAIT Radio v. FCC, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969). Here, the core public-interest considerations underlying the contingent-application rule are the Commission's efficient processing of applications and the expeditious authorization of new and improved broadcast service to the public. Clearly, under the unique facts of this case, the core public-interest considerations are better served by any necessary waiver of the contingent-application rule, than by the rule's mechanical application.