Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Application of	)	
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THRESHOLD COMMUNICATIONS	)	File No. BNPH-20110630AHJ
	)	Facility ID #189494
For a New Commercial FM Station at	)	
Napavine, Washington	)	

TO: The Secretary
ATTN: Chief, Audio Division
Media Bureau

REPLY TO OPPOSITION TO MOTION TO STRIKE

Threshold Communications hereby submits this Reply to the September 30, 2015 Opposition filed by Premier Broadcasters, Inc. in response to Threshold's September 15, 2015 Motion to Strike certain content in Premier's August 31, 2015 Reply to Opposition to Request for Clarification and Petition for Reconsideration. The passage in question concerned data offered by Premier for the first time in its Reply that Premier averred was relevant to rebutting the presumption that Clatskanie is part of the Longview urbanized service area.

In its July 7, 2015 Letter Decision, the Media Bureau ruled that the urbanized service area presumption does indeed apply to Clatskanie.[1] Premier availed itself of the opportunity to file a "Request for Clarification and Petition for Reconsideration" of that Letter Decision. That pleading was Premier's opportunity to timely present arguments or evidence that would support reconsideration of the Letter Decision. Premier spent most of that pleading arguing that the

[1] *Donald E. Martin, Esq. and Meredith S. Senter, Jr., Esq.*, Letter, 30 FCC Rcd 7152 (MB 2015).

urbanized service area presumption should not apply to Clatskanie, and barely touched on matters that might rebut the presumption. In its Opposition to Premier's Petition for Reconsideration, Threshold merely observed that Premier had offered no evidence to rebut the presumption. Premier countered in its Reply to Threshold's Opposition with information to rebut the presumption – claiming, incredibly, that it was merely responding to the matter raised in the Opposition, as permitted by §1.106(h) of the Commission's rules. Threshold's observation that Premier's pleading lacked a basic requirement for a petition for reconsideration cannot be the legitimate basis for introducing that evidence in a reply pleading. It is axiomatic that §1.106(f) of the Commission's rules anticipates that a petitioner seeking reconsideration will offer all arguments and evidence available to it within the 30-day period allowed for such petitions.

Premier asserts that "the law in this case is that new evidence will be considered if it is relevant to the ultimate Section 307(b) issue."[2] To support this proposition, Premier cites Threshold's May 10, 2013 Opposition to Premier's April 13, 2013 Petition for Reconsideration of an earlier Media Bureau Letter Decision.[3] Premier is referring to Threshold's assertion in that pleading that the urbanized service area presumption applies to Clatskanie. This argument and the evidence supporting it were presented in response to Premier's position as stated in its Petition for Reconsideration, and not as out-of-bounds new material.

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[2] Opposition, at 3.

[3] *Donald E. Martin, Esq. and Meredith S. Senter, Esq.*, Letter, 29 FCC Rcd 15300 (MB 2014) (the 2014 Letter Decision).

The principal substantive argument in Premier's Petition was that the Bureau had failed to apply the mandates of *Rural Radio*[4] in coming to its tentative conclusion that Napavine was the preferred community in the comparative analysis between Napavine and Clatskanie. Premier expounded at great length about the tenets of *Rural Radio.* In that context, it urged the Bureau to require Threshold to amend its application to provide additional data,[5] and cited a recent Bureau decision in a similar proceeding where the Bureau directed an applicant to provide more information.[6] Premier went on to state explicitly that an important factor in this case is "the extent to which one community is urban and the other rural."[7] Premier could not have extended a clearer invitation for Threshold to address the question of urban vs. rural. Thus, Threshold's discussion of the urbanized service area presumption – a policy adopted in the *Rural Radio* proceeding – in its Opposition was only a natural and legitimate response to the material in Premier's Petition, and certainly within the bounds of §1.106(h) of the rules.

To support its point, Premier cites the 2014 Letter Decision, wherein the Bureau characterized Threshold's introduction of the urbanized service area presumption as "new matter," but allowed it for the purpose of facilitating a complete record.[8] For the reasons stated above, Threshold believed at the time, and respectfully suggests now that the Bureau's

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[4] *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, 26 FCC Rcd 2556, 2573 (201 1).

[5] 2013 Petition for Reconsideration, at 17.

[6] *Ibid.,* at n. 40.

[7] *Ibid.,* at 21.

[8] Opposition, at 3, *citing* 2014 Letter Decision, 29 FCC Rcd, at 15303.

characterization of this material as "new matter" was incorrect. Threshold has had no occasion to challenge that decision until now. Happy with the substance of the Bureau's ruling that the presumption was to be considered and adopted, Threshold was not in a position to dispute its procedural aspects at that time.

Consequently the law of the case should not be and is not that parties may submit new evidence in a manner inconsistent with the Commission's procedural rules. Threshold respectfully urges that its Motion to Strike should be granted.

Respectfully submitted,

THRESHOLD COMMUNICATIONS

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