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FEDERAL COMMUNICATIONS COMMISSION

FEBRUARY 9, 1973 TO MARCH 23, 1973

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ROBERT E. LEE
NICHOLAS JOHNSON
H. REX LEE
CHARLOTTE REID
RICHARD E. WILEY
BENJAMIN L. HOOKS

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39 F.C.C. 2d

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TABLE OF ABBREVIATIONS

AM—Amplitude Modulation.
Act—Communications Act of 1934, as amended, 47 U.S.C. 151 et seq.
Amer. B/cing Cos.—American Broadcasting Companies.
Amer. Tel. & Tel.—American Telephone and Telegraph.
Assn—Association.
B/c—Broadcast.
B/cers—Broadcasters.
B/cing—Broadcasting.
CATV—Community Antennae Television.
Col. B/cing Sys.—Columbia Broadcasting System.
ComSat Corp.—Communications Satellite Corporation.
Co.—Company.
Corp.—Corporation.
CP—Construction Permit.
FCC—Federal Communications Commission.
FM—Frequency Modulation.
Inc.—Incorporated.
ITT World Comm.—International Telephone and Telegraph World Communications.
National B/cing Cos.—National Broadcasting Companies.
Rule—Rules and Regulations of the Federal Communications Commission.
Satellite Act—Communications Satellite Act, 47 U.S.C. 701 et seq. (1962).
TV—Television.
UHF—Ultra High Frequency.
VHF—Very High Frequency.

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F.C.C. 72–1012

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Revision of
AMENDMENT REQUIREMENTS FOR PENDING CABLE TELEVISION APPLICATIONS AND PLEADINGS

NOVEMBER 9, 1972.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), ROBERT E. LEE, H. REX LEE, REID AND WILEY, ISSUED THE FOLLOWING PUBLIC NOTICE.

REVISION OF AMENDMENT REQUIREMENTS FOR PENDING CABLE TELEVISION APPLICATIONS AND PLEADINGS

On September 14, 1972, the Commission issued a Public Notice entitled *Amendment Requirements for Pending Cable Television Applications and Pleadings*, FCC 72–825, — FCC 2d —. In that notice, the Commission stated which of its amendments to the cable television rules adopted in its *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, would be applied retroactively to applications and pleadings filed before the effective date of the *Reconsideration*, July 14, 1972, and which would not.

In that Public Notice, the Commission stated that Section 76.13(b)(2) of the Commission's Rules would not apply retroactively. In view of the need for the information contained in FCC Form 325, the Commission has now determined that Section 76.13(b)(2) of the Rules will be applied retroactively to March 31, 1972. Consequently, all applications filed on or after March 31, 1972, should be amended to supply the information required by Section 76.13(b)(2) of the Rules.

F.C.C. 73-7

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Petition by
ANDREA RADIO CORP., LONG ISLAND CITY, N.Y.
For Waiver of the Comparable Tuning
Rules (Sec. 15.68)

JANUARY 4, 1973.

Mr. EMIL JOSS,
Vice President, Engineering, Andrea Radio Corp., 27-01 Bridge Plaza North, Long Island City, N.Y.

DEAR MR. JOSS: This concerns a progress report filed by Andrea on May 12, 1972, which was treated as a petition for waiver of the comparable tuning rules (47 CFR 15.68), and your supplementary letter of October 17, 1972. The waiver requested would permit the production, until January 1, 1974, of one television receiver model which combines a non-remotable Sarkes Tarzian 70-position UHF detent tuner with a remoted VHF tuner.

Prior to July 1, 1972, Andrea produced three receiver models, including a 25″ model equipped for VHF remote control operation. The remote control model accounted for 25% of sales. Early in 1970, Andrea began planning for remoted UHF tuning. Original planning called for use of the Sickles-Hopt remotable six-position UHF tuner which Hopt subsequently decided not to produce. Andrea then obtained and tested a number of varactor tuners. However, each of these tuners presented engineering problems; an attempt to remote the Sarkes Tarzian 70-position tuner was unsuccessful; and, by July 1, 1972, Andrea had ceased production of the remote control model, continuing to produce two models, neither of which was equipped for comparable tuning. Andrea now requests permission to introduce a new 25″ color model with remoted VHF tuning and a non-remoted 70-position Sarkes Tarzian tuner. This model is expected to account for 50% of sales. Andrea would accept from Tarzian only tuners meeting the ±3MHz tuning accuracy standard. They plan to convert this model for use of a remoted UHF varactor tuner by January 1, 1974. As of July 1, 1973, they expect to have replaced the other two models with models which comply with the comparable tuning rules. Thus plans call for 67% compliance by July 1, 1973 and 100% compliance by January 1, 1974. A waiver of the percentage of models requirement through June 30, 1973, and of the "new model" requirement through December 31, 1973, would be required to accommodate these plans.

Waivers involving the combination of a remoted VHF tuner and a non-remoted UHF tuner were recently granted to General Electric and Packard Bell. In both cases, however, the companies were producing sufficent numbers of comparable models to comply with the percentage of models requirement and required a waiver only because

the remoted receivers were "new models" within the meaning of the comparable tuning rules. Andrea, on the other hand, has never produced a comparable model and, if the waiver is granted, will not achieve compliance with the percentage of models requirement until July 1, 1973. (Because of the small number of models produced, the company has not until now been affected by the percentage of models requirement.) This is an important distinction. If a waiver request on these facts were presented by a larger firm with more adequate technical resources which was planning for minimal compliance with the regulations and was better able to sustain the financial losses involved, we would be disinclined to grant the relief requested. However, Andrea is a small firm. It appears to have made a considerable, good faith effort to achieve compliance, and has failed for lack of adequate technical resources. It now plans for 100% compliance six months ahead of the date upon which full compliance is required. In view of the firm's financial position, enforcement of the rules to prohibit 50% of prospective sales would work an extreme hardship on the company. On these facts, we are disposed to grant the request.

Accordingly, Andrea is hereby authorized to combine a nonremotable 70-position UHF tuner with a remoted VHF tuner in units of one receiver model through December 31, 1973, and to count that model toward compliance with the 40% of models compliance figure through June 30, 1973.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 72-1003

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of AVCO BROADCASTING CORP. For Renewal of License for Station WOAI-TV, San Antonio, Tex.	File No. BRCT-45

MEMORANDUM OPINION AND ORDER

(Adopted November 8, 1972; Released November 15, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS DISSENTING.

1. The Commission presently has before it for consideration (i) the above-captioned license renewal application for Station WOAI-TV, San Antonio, Texas, filed by Avco Broadcasting Corporation (Avco); (ii) a timely petition to deny that application, filed July 1, 1971, by the Bilingual Bicultural Coalition on Mass Media (Coalition); (iii) Avco's opposition to the petition to deny, filed August 31, 1971;[1] and, (iv) the Coalition's "Motion to Accept Supplemental Petition to Deny", filed October 26, 1971.[2]

2. The license of Avco for Station WOAI-TV, San Antonio, Texas, expired August 1, 1971. Action on the renewal application was deferred pending consideration of the allegations raised by petitioners in this proceeding.

3. The Coalition, which is composed of representatives from numerous community organizations, "was created specifically to work with the mass media, including broadcasters, and the Community which the Coalition represents and to facilitate a dialogue between the mass media and the Community. . . ." Therefore, the Coalition bases its standing on its claim of being a responsible representative of the listening public. We conclude that the Coalition has standing under Section 309(d)(1) of the Communications Act of 1934, as amended. *Office of Communications of United Church of Christ* v. *F.C.C.*, 359 F.2d 994 (1966).

4. Avco raises a question concerning compliance of the petition to deny with the procedural requirements of Section 309(d)(1) of the Act, and Section 1.580(i) of the Commission's Rules. Both sections require a petition to deny to be supported by an affidavit of a person or persons with personal knowledge of the facts alleged. Since the instant petition to deny is unsupported by any affidavits, it is clearly

[1] On July 21, 1971, the Commission extended the time for filing the opposition until September 1, 1971.

[2] On September 20, 1971, the Commission extended the time for filing the reply until October 12, 1971. On October 12, 1971, the Coalition filed a "Motion for Extension of Time" to file a supplemental petition to deny. This motion was denied by the Commission on October 18, 1971, FCC 71-1078. However, the date for filing the reply was extended until October 26, 1971. No reply has been filed. Instead the petitioner filed the instant motion accompanied by a "Supplemental Petition to Deny".

defective under the terms of the statute and will be dismissed as a formal pleading. Nevertheless, due to the nature of the matters raised by the Coalition, we have elected to treat the petition as an informal objection filed pursuant to Section 1.587 of our rules.

5. The Coalition's "Motion to Accept Supplemental Petition to Deny" raises another procedural question. On October 18, 1971, we denied the Coalition's request for an extension of time to file a supplemental petition to deny. Footnote 2, *supra*. Nonetheless, the Coalition filed its supplemental petition to deny accompanied by a motion that it be accepted. In so doing, the Coalition contends that the Commission's letter of October 18, 1971, did not forbid introduction of this supplemental petition, but only denied an extension of time to prepare it. Such a petition, however, is not permitted by the Commission's rules, which limits pleadings to the petition to deny, an opposition, a reply, and such other pleadings as may be authorized by the Commission. Therefore, the filing of such a pleading requires specific authorization by the Commission. This authorization has not been granted and the Coalition has failed to provide any substantial reasons why we should now permit the filing of its supplemental petition. Nevertheless, we have examined the supplemental petition to deny to determine if it contains such information as would require our consideration in this proceeding. The essence of the Coalition's supplemental petition is that an affidavit by an employee of license ". . . was not a fair representation of the whole truth." Instead, the Coalition alleges that "[t]he Station's threat of loss of employment . . . [was] . . . a significant reason in his [the employee's] decision to execute Affidavit." However, the only support for the Coalition's allegations is an affidavit of Ruben Sandoval, Chairman of the Coalition's legal department, who states that the employee involved told him that he was coerced into making an affidavit by the threat of loss of his job. Mr. Sandoval further states that the employee agreed to sign an affidavit refuting his original affidavit as contained in the licensee's opposition. Mr. Sandoval states, however, that individual has evaded him and has not made such an affidavit attesting to this allegation. In short, therefore, this allegation is based solely upon hearsay evidence. The allegation of ultimate, conclusionary facts or mere general allegations on information and belief, supported by general affidavits, are not sufficient to require an evidentiary hearing. Also, it is noted that Mr. Santos is no longer employed by WOAI–TV and, consequently, we fail to understand why he is now reluctant to withdraw his initial affidavit if, in fact, that affidavit was executed because of a threat of a loss of employment. Thus, we conclude that there is no substantial merit to the Coalition's supplemental petition.

6. The Coalition bases its request for denial of the renewal of WOAI–TV's license on the station's failure to meet its public interest obligations in four areas. Briefly, the Coalition alleges that Avco has (i) failed to ascertain the problems of the public, in general, and Mexican-Americans, in particular; (ii) failed to maintain employment practices which avoid discrimination; (iii) violated Commission rules concerning the availability of a public file; and, (iv) demonstrated lack of good character by threats and harassment.

ASCERTAINMENT

7. Initially, the Coalition notes that WOAI–TV's renewal application lists five Advisory Conferences held at the station's studios, and that such conferences were attended by 28 Mexican-Americans. However, the Coalition points out that during the six months prior to the filing of WOAI–TV's renewal application, the licensee contacted only 27 persons, of whom only eight or 25.9% were Mexican-American. The Coalition maintains that this small number of persons interviewed is insufficient in view of San Antonio's total population of 830,000. The Coalition notes further that two individuals, Rosie Castro and Felix Guerra who are listed as persons periodically contacted by the station, were not, in fact, contacted periodically. Rather, the Coalition asserts that they were contacted only once about a news item concerning a school boycott. Finally, the Coalition submits that in a prior to license renewal, in order to determine community needs." Station may not limit its interviews to a few individuals but must sample the entire community, its establishment, its academic levels, and its social activities."

8. Avco submits, and we agree, that the Coalition, by its failure to mention all of Avco's ascertainment procedures, has ignored the comprehensive nature of Avco's efforts. The 27 individuals which the Coalition alleges were the only ones contacted by Avco during the six months preceding the filing of the renewal application appear in a list in Avco's renewal Exhibit No. 3 under the heading "Community Contacts". However, it is clearly stated in the sentence immediately preceding this list that "[i]ncluded in this exhibit are examples of the kinds of people who were interviewed, six months prior to license renewal, in order to determine community needs." Immediately following the list of 27 individuals is the notation, "For further details, see Exhibit 3.13." Exhibit 3.13 indicates that 84 individuals were contacted in the six months preceding the renewal application. Furthermore, 34 of these individuals or about 40% were Mexican-Americans. Avco's renewal application indicates that approximately 42% of the population is Mexican-American while the Coalition submits that about 48% of the population is Mexican-American. We believe it is unnecessary to resolve the statistical discrepany since we do not require licensees to consult with minority groups in proportion to their percentage of the total population. In this regard, we stated in the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971), that low representation of a particular group in the ascertainment process would not make a showing defective. Further, ". . . we believe the question should be one of representativeness, not one of specific numbers. However, it should be noted that it is impossible to require a one-to-one ratio in terms of numbers because most people belong to several groups, and because groups vary widely as to their membership." *Primer*, *supra*, at p. 668.

9. In addition to the 84 individuals consulted by Avco during the six months preceding its renewal application, we note some of the procedures utilized in establishing and maintaining a continuing dialogue with the people of its service area. In the *Network Program-*

ming Inquiry of July 1969, FCC 60–970, 25 F.R. 7291, 20 RR 1901, the Commission stated, ". . . the principal ingredient of the licensee's obligation to operate his station in the public interest is the diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs, and desires of his community or service area, for broadcast service." In furtherance of this obligation, beginning in April 1970, WOAI–TV conducted a series of five Advisory Conferences ". . . to develop community needs, as presented by the conferees, *by developing and delivering programming which would aid in resolving some of these community problems.*" The first conference included 35 citizens representing a cross section of the population including 12 Mexican-Americans. Two youth conferences involved participation with 93 high school and college students, including 24 Mexican-Americans. The Mexican-American Advisory conference was attended by 28 leaders of the Mexican-American community and the Drug Conference was attended by 15 persons representing medicine, education and law enforcement. At each conference a list of community problems was developed. An outgrowth of the Drug Conference was the establishment of the WOAI–TV Drug Advisory Council which meets monthly to discuss drug related problems as they can be related to station involvement. A further method used by Avco to maintain a personal dialogue with community leaders is the solicitation of community contact reports. Department heads and supervisory employees are encouraged to contact the public to seek out community needs and report them to the station management. In this connection, WOAI–TV contacted some 67 Mexican-Americans between October 1, 1969, and February 1, 1971. WOAI–TV also maintains a Speakers Bureau to supply speakers for meetings or functions in the San Antonio area. These speakers distribute survey forms to their audiences in a further effort to ascertain the community's needs.

10. As a result of these and other methods of ascertainment, the licensee determined numerous community problems. Renewal Exhibit 4 lists the following as the top priority problems:

1. Work for equal educational opportunities for all students.
2. Stress the need for more vocational education.
3. Increase bi-lingual education in San Antonio schools.
4. Increase job opportunities for hard core unemployed and encourage a more industrial economy.
5. Increase awareness of the problems and projects of local, state and national government.
6. Promote law, order and safety of all citizens.
7. Provide more neighborhood health services and increase supply of nurses for existing facilities.
8. Stress the dangers of drug misuse.
9. Stress the importance of anti-pollution measures.
10. Publish farm and ranch information and explain farm problems for consumers.
11. Continue to promote spiritual awareness.
12. Present cultural programs relevant to all citizens of the South Texas area and promote better understanding between all ethnic groups.
13. Stress the need for improved drainage, street, sewers and transportation facilities for all citizens of San Antonio.
14. Assist persons in the poverty criteria and the handicapped in order to have a better life.
15. Offer a meaningful thrust of development for low income housing.

Avco proposes to meet these needs with specific programs. Among those proposed in the category of "public affairs", for example, are the following:

"TV–4 Jobs", a weekly 30-minute program relating to job opportunities (Need 4).
"Minority Forum", a twice monthly discussion program with leaders of minority communities (Needs 1–3, 7 & 13).
"Generation", a monthly 30-minute program directed to problems of high school and college students (Needs 1, 3, 5, 6, 9, 12 & 13).
"Conversation", a monthly 30-minute discussion program of current topics (Needs 6, 8, 9, 12 & 14).
"The Drug Scene", a monthly 30-minute program aimed at drug prevention and rehabilitation (Needs 7 & 8).
"Adelante", a daily 15-minute program discussing problems encountered by Mexican-Americans (Needs 2, 3, 4, 7, 12, 13 & 14).
"Conflict", a discussion of controversial issues.
"Report From Austin", special programs prior to and during legislative sessions concerning actions of State Legislators (Need 5).
"RFD Newsreel", a weekly 15-minute program of farm and ranch news (Need 10).

11. On the basis of all of the information submitted in Avco's renewal application and its opposition pleading, some of which has been detailed above, we conclude that the number and character of persons interviewed, the problems ascertained, and the programs proposed satisfy our requirements. Accordingly, there are no substantial and material questions of fact with regard to Avco's ascertainment which require further inquiry in a hearing.

EMPLOYMENT

12. In the area of employment policies and practices the Coalition alleges that WOAI–TV has violated Section 73.680 of the Commission's Rules. Specifically, the Coalition alleges that the station does not employ Mexican-Americans in direct proportion to their percentage of the total population of San Antonio. Thus, while San Antonio has a total population of 830,000, of which 48% is Mexican-American, it is noted that only 12% of the station's 85 employees are Mexican-American. This indicates, according to the Coalition, that the station is practicing "*de facto* segregation." Further, the Coalition alleges that the station "practices patronismo segregation, in that none of its administrators, managers, officials and decision-makers in higher positions of responsibility are Mexican-American." The Coalition acknowledges that WOAI–TV conducts an informal but effective training program, and, thus, has the means to establish parity in employment. However, the Coalition concludes that failure to establish parity in employment indicates the station is not making a good faith effort to recruit and train Mexican-Americans. Further, the Coalition alleges that 12% Mexican-American employment is a "deceptively inflated" statistic, since one of the persons listed in its renewal application, Judy Chapa, had quit her job months before the application in disgust over treatment of her by the Station. The Coalition also alleges that none of the Mexican-American employees at the Station are members of organizations responsible to the Community. Finally, the Coalition alleges that the station has relegated its Mexican-American

news reporter to menial duties, has restricted him to unimportant news items and uses him ". . . to cover Mexican-American activities which the Station deems subversive for the purpose not of news coverage but merely to gather information for the Station to pass on to the establishment."

13. Section 73.680 of the Commission's Rules requires television licensees to afford equal opportunity in employment to all qualified persons, and to "establish, maintain, and carry out, a positive continuing program of specific practices designed to assure equal opportunity in every aspect of station employment policy and practice." The Coalition's conclusion that these rules necessarily require employment of ". . . a percentage of Mexican-American employees which approximates the percentages of Mexican-Americans in the total population" is erroneous. In this connection, we stated in *Scripps-Howard Broadcasting Company*, 31 FCC 2d 1090 (1971):

> **The Commission does not requires its licensees to employ numbers of minority groups in direct proportion to such groups' percentage of population in the community. In other words, the Commission does not require broadcasters to observe a quota system in their employment practices. The Commission does require that licensees make every effort to eliminate racial considerations from influencing hiring and promotional practices. . . .**

14. As we stated in *The Evening Star Broadcasting Company* (WMAL–TV), 27 FCC 2d 240 (1971), *affirmed sub nom., Chuck Stone* v. *Federal Communications Commission*, D.C. Cir., Case No. 71–1166 (June 30, 1972), *rehearing denied*, September 1, 1972, simply indicating the number of minorities employed by a licensee, without citing specific instances of discrimination or showing a conscious policy of exclusion, is insufficient to warrant designating a license renewal application for evidentiary hearing. There is no showing of specific instances of discrimination or a conscious policy of exclusion in this proceeding which would require an evidentiary exploration into Avco's employment policies and practices.

15. Further, while an extremely low rate of minority employment may raise questions requiring appropriate administrative inquiry, *Chuck Stone* v. *Federal Communications Commission*, *supra*, such is not the case in this proceeding. Rather, the facts in this proceeding disclose that the number of minorities employed by Avco fall within a range of reasonableness when considered in conjunction with the number of minorities in the San Antonio standard metropolitan statistical area, which is comprised of 44 percent Spanish-surnamed Americans and eight percent Negro and other minorities.

16. Hence, a review of Avco's annual statistical employment profile reports (FCC Form 395) reveals that in 1971 WOAI–TV had 85 full-time employees of whom 11 were Spanish-surnamed Americans and four were Black. Thus, minorities represented 17.7 percent of the station's total full-time workforce. Moreover, of the 11 full-time Spanish-surnamed American employees, four were professionals, two were technicians, three were office and clerical and two were laborers. Similarly, a review of Avco's annual statistical profile report for 1972 reveals that WOAI–TV had 90 full-time employees of whom 16 are Spanish-surnamed Americans and three are Black. Thus, of the station's full-time workforce, 21.1 percent are minorities. Also, of these

minority employees, three are professionals, three are technicians, one is a sales worker, four are office and clerical, and five are semi-skilled operatives.

17. It is also noteworthy that WOAI–TV has, on at least three occasions, hired qualifiable Spanish-surnamed Americans and trained them for positions of responsibility. These positions included an on-the-air news reporter, a news reporter-photographer, and an Assistant Community Services Director. Additionally, Avco has developed an affirmative action program designed to assure nondiscrimination in its employment policies and practices. Among the practices listed by Avco in WOAI–TV's license renewal application (Section VI) to assure nondiscrimination in recruiting are the placement of advertisements in media which have a significant circulation in the minority community, recruitment of schools and colleges with significant minority group enrollments, and maintaining systematic contacts with many minority-group organizations in the community. No facts have been submitted which would disclose that Avco's employment policies and practices contain barriers to equal opportunity in employment or that the licensee is not exercising good faith in implementing its equal employment opportunity program.

18. On the basis of the foregoing, we conclude that the coalition has failed to raise a substantial and material question of fact regarding Avco's employment policies and practices which warrant exploration in an evidentiary hearing. Further, with regard to the Coalition's other allegations, we believe that its assertion that Avco's employment statistics are inflated is misplaced. WOAI–TV's license renewal application makes no mention of Judy Capa in any section concerning the station's employment policies and practices. Further, the Coalition's charge that WOAI–TV's Spanish-surnamed American employees do not belong to organizations responsible to the community is irrelevant to our consideration of the station's employment policies and practices. If the station were to require membership in certain organizations as a condition of employment, as the Coalition seems to suggest, it would then be setting up artificial barriers to employment which could be in violation of our rules. Finally, we conclude that the Coalition's charge, that WOAI–TV's Mexican-American news reporter is relegated to menial duties is without merit. The charge is unsupported by any factual evidence and is refuted by a sworn affidavit of Mr. Richard Santos, the station's Mexican-American news reporter to whom Avco believes the Coalition's charge refers.

PUBLIC FILE

19. The Coalition, in its petition, also charges Avco with failure to provide its representatives with access to WOAI–TV's public file and, in this respect, alleges that the licensee's conduct (i) violates Section 1.539 of the Commission's rules, 47 C.F.R. 1.539, and (ii) constitutes harassment of citizens' participation in broadcasting, demonstrating lack of good character. In its reply, however, the Coalition withdraws these charges since supporting affidavits from its representatives could not be obtained. Accordingly, although the pleadings otherwise indicate that Avco made available to the Coalition's representatives

WOAI–TV's public file within a few minutes of their request, in view of the Coalition's withdrawal of its charges no further discussion of this aspect of the instant proceeding is warranted.

CONCLUSIONS

20. Section 309(d) of the Communications Act provides for granting renewal applications where the Commission finds, after full consideration of all pleadings, that there are no substantial and material questions of fact that a grant of the applications would be consistent with the public interest. Section 309(d) also provides that where a petition to deny is filed it must contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest. Where the Commission finds that such a showing has not been made, it may deny the petition. Accordingly, based upon our review of Avco's renewal application and all the pleadings filed in this proceeding, we find that the coalition has failed to raise substantial and material questions of fact which establish a *prima facie* case for denial of WOAI–TV's license. We also find that a grant of Avco's license renewal application for WOAI–TV would serve the public interest, convenience and necessity.

21. In reaching our conclusions, we are not unaware of the concern being expressed by minority groups about the responsiveness of the broadcast media to their local problems. The Commission, of course, cannot waive or ignore the pleading standards set forth in Section 309(d) of the Act to accommodate petitioners. Clearly, if members of the public choose to wait until the end of a license term and then petition to deny renewal of license, they must meet the strict requirements of Section 309(d). This does not mean however that community groups are left without the means to improve local broadcast service. We have found that cooperation at the local level is the best and most effective method of resolving local problems and improving local service. Accordingly, we wish to reaffirm our prior expression of policy approving community-broadcaster discussions *throughout the license terms.* Obviously, while under an obligation to ascertain and program for community problems, no broadcaster can be aware of everyone's needs all the time. Therefore, interested members of the public who feel a station's performance is inadequate should so advise the broadcaster to give him the opportunity to consider their ideas and suggestions. Such discussions will be more effective if conducted throughout the license term and not only at renewal time.

22. In view of the foregoing and upon review of Avco's renewal application for WOAI–TV, we conclude that Avco is legally, technically, financially and otherwise qualified to remain a licensee and that a grant of its renewal application would serve the public interest, convenience and necessity.

23. Accordingly, IT IS ORDERED, That the "Motion to Accept Supplemental Petition to Deny" filed by the Bilingual Bicultural Coalition on Mass Media, IS DENIED.

24. IT IS FURTHER ORDERED, That the "Petition to Deny" the license renewal application of Avco Broadcasting Corporation for Station WOAI-TV, IS DISMISSED and when considered as an informal objection IS DENIED.

25. IT IS FURTHER ORDERED, That the license renewal application of Avco Broadcasting Corporation for Station WOAI-TV, IS HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-49

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re CAPITOL DISTRICT BETTER T.V., INC., VILLAGE OF COLONIE, N.Y. CAPITOL DISTRICT BETTER T.V., INC., TOWN OF COLONIE, N.Y. For Certificates of Compliance	CAC-75; CSR-113; CSR-140 NY335 CAC-76; CSR-114; CSR-141 NY336

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND H. REX LEE CONCURRING IN THE RESULT.

1. On March 31, 1972, Capitol District Better T.V., Inc., filed an "Application for Certificate of Compliance Pursuant to Section 76.13(b) of the Rules" (CAC-75) in which it proposed to operate a new cable television system at Village of Colonie, New York, and an "Application for Certificate of Compliance Pursuant to Section 76.13(b) of the Rules" (CAC-76) in which it proposed to operate a new cable television system at Town of Colonie, New York, both communities being in the Albany-Schenectady-Troy television market (the 34th largest). Objections to these applications were filed by Albany Television, Inc., licensee of Television Broadcast Station WTEN, Albany, New York, and by Sonderling Broadcasting Corporation, licensee of Television Broadcast Station WAST, Albany, New York. In addition, Faith Center, licensee of Station WHCT-TV, Hartford, Connecticut, filed a "Petition for Carriage" pursuant to Section 76.7 of the Commission's Rules. Thereafter, Capitol filed an "Amendment and Reply" for each application August 17, 1972, and Albany Television filed a "Response to Request for Special Relief."

2. The only contested issue regarding the amended applications relates to signal carriage. Capitol first proposed to carry the following television signals on its systems: WAST (ABC), and WTEN (CBS), both Albany, New York; WRGB (NBC), and WMHT (Educ.), both Schenectady, New York; WSBK-TV (Ind.), Boston, Massachusetts; and WOR-TV (Ind.) and WPIX (Ind.), both New York, New York. This proposal was challenged by the Albany television licensees as inconsistent with Section 76.61(b)(2) of the Rules[1] since the two

[1] Section 76.61(b)(2)(i) of the Rules provides that, "For the first and second additional signals, if any, a cable television system may carry the signals of any independent television station: *Provided, however,* That if signals of stations in the first 25 major television markets (see § 76.51(a)) are carried pursuant to this subparagraph, such signals shall be taken from one or both of the two such closest markets, where such signals are available. If a third additional signal may be carried, a system shall carry the signal of any independent UHF television stations located within 200 air miles of the reference point for the community of the system (see § 76.53), or, if there is no such station, either the signal of any independent VHF television station located within 200 air miles of the reference point for the community of the system, or the signal of any independent UHF television station.

NOTE: It is not contemplated that waiver of the provisions of this subparagraph will be granted.

closest markets in the first 25 major markets are Boston and Hartford, where WHCT–TV is located. Consequently, Section 76.61(b)(2) of the Rules would prohibit importation of independent signals from New York City, the third closest market. Capitol argued that WHCT–TV's programs are heavily religious and that it should not, therefore, be considered as an independent station. During the pendency of these applications, the Commission considered and rejected this argument, par. 21, *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326, 334, and, thereafter, Capitol amended its applications to propose carriage of WHCT–TV [2] and a waiver of the rules to allow it nonetheless to carry WOR–TV, WPIX, and WSBK–TV—a total of four rather than three independent signals.

3. In support of its waiver request, Capitol argues (a) that WHCT–TV's programs are limited both in duration and content, hence ineffective "to get cable moving"; (b) that the public interest places a premium on in-state New York City signals for Albany viewers; (c) that there is a community of interest between residents of Albany and New York City which does not exist with respect to out-of-state cities; and (d) that grant of the relief requested would not have an adverse impact on Albany market stations. We rule on Capitol's arguments as follows: (a) Faith Center has demonstrated that it carries a variety of nonreligious programs (for single example, New York Yankee baseball games) of general interest. In these circumstances, we must reject Capitol's arguments lest we encourage unnecessary sameness of independent programs simply to reassure cable operations of the greater saleability of their service; (b)(c) Capitol has neither supported its allegations factually nor otherwise persuaded us of the great public interest in providing New York City programs to Albany; and (d) in view of our rulings on (a)–(c) above, this does not appear relevant. And even if it did, Capitol has not supported the argument. In these circumstances, Capitol's waiver request will be rejected.

4. Although not raised by the parties, it is clear that Capitol's franchises [3] are not entirely consistent with Section 76.31 of the Rules (for example, both are for twenty year terms). Consequently, although we find the franchises to be in substantial compliance with our policies, we will issue certificates of compliance only until March 31, 1977. E.g., *CATV of Rockford, Inc.*, FCC 72–1005, —FCC2d—. The remaining question for decision is—in view of our ruling in par. 3 above—the independent signals to be authorized to Capitol. Consistent with Section 76.61(b)(2) of the Rules, these will be: WHCT–TV (closest market in 25 major markets); WSBK–TV (2nd closest market in 25 major markets); and one independent UHF television station located within 200 air miles of the communities, which Capitol may select. A certificate of compliance will be issued when Capitol advises the Commission of its choice.

In view of the foregoing, the Commission finds that a grant of the above-captioned applications would be consistent with the public interest.

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[2] Faith Center has only sought carriage of WHCT–TV—it does not seek enforcement of Section 76.61(b)(2) of the Rules.

[3] The franchise for Town of Colonie was issued August 27, 1964, and the franchise for Village of Colonie was issued October 28, 1968.

Accordingly, IT IS ORDERED, That the "Petition for Carriage" filed June 16, 1972, by Faith Center IS GRANTED.

IT IS FURTHER ORDERED, That the objections filed May 12, 1972, by Sonderling Broadcasting Corporation ARE GRANTED to the extent indicated above, and otherwise ARE DENIED.

IT IS FURTHER ORDERED, That the "Response to Request for Special Relief" filed August 30, 1972, by Albany Television, Inc., IS GRANTED to the extent indicated above, and otherwise IS DENIED.

IT IS FURTHER ORDERED, That Capitol District Better T.V., Inc.'s applications (CAC–75; CAC–76) ARE GRANTED and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-986

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
THOMAS M. SLATEN, BEVERLY HILLS, CALIF.
For Reconsideration of Grant of Review of Fairness Doctrine Ruling Re Stations KNX and KNX-FM

NOVEMBER 8, 1972.

AIR MAIL

MR. THOMAS M. SLATEN,
Post Office Box 5338,
Beverly Hills, Calif.

DEAR MR. SLATEN: The Commission has before it your "Petition for Reconsideration" requesting reconsideration of our action (34 FCC 2d 733) granting the application of Columbia Broadcasting System, Inc., for review of the Broadcast Bureau's ruling that Radio Stations KNX and KNX-FM had failed to comply with the fairness doctrine with respect to an editorial advocating reform of the California judiciary. In granting that review, we ruled that in light of additional facts submitted by CBS showing repeated attempts by the stations to obtain responsible representation of views contrasting with the position taken by their editorial, the licensee had made a reasonable effort, overall, to comply with the fairness doctrine and that, therefore, the Commission would not second-guess CBS's determination that you were not an appropriate spokesman to present a viewpoint on the issue of judicial reform.

We believe that the facts pertinent to this matter are fully and adequately set forth in our previous decision and therefore need not be repeated here.

You first assert that in granting the CBS application for review, the Commission erred in waiving provisions of Sections 1.106 and 1.115(c) of its rules to permit CBS to introduce for original consideration facts showing additional efforts made by KNX and KNX-FM to present viewpoints in contrast with that of their editorial. We find no such error, for Section 1.3 of the Commission's Rules provides that "Any provision of the rules may be waived by the Commission on its own motion . . . if good cause therefor is shown." It is manifest that such additional facts were plainly relevant and material to the issue before the Commission of whether the licensee, either before or after rejecting your offer of reply, had made a reasonable effort to present contrasting viewpoints. A proper determination as to the reasonableness of the licensee's overall performance under the fairness doctrine necessarily requires that all pertinent facts be before the Commission for review, and that administrative necessity will establish sufficient "good

cause" for waiver where no element of bad faith is evident. While we did admonish the licensee for its tardiness in submitting such additional facts, reminding it of its duty to respond fully to Commission inquiries, we did not then, nor do we now, find that any bad faith on its part was indicated.

Your petition next asserts that it was error for the Commission to consider such additional facts on the ground that this additional evidence "was not of probative value." Specifically, you contend that CBS's additional allegation of fact that KNX and KNX–FM had sent copies of the editorial to 550 individuals and groups in their service area with notice that reply time would be afforded responsible representatives of opposing viewpoints upon request was "unsubstantiated" and hence improperly considered. Since your petition presents no denial of the truth of the additional facts introduced by CBS, and does not allege any facts which might be taken to controvert those submitted by the licensee, your argument that such evidence was improperly considered must be rejected.

Finally, we note that your petition repeatedly attempts to direct our consideration to your qualifications as a potential spokesman on the issue of judicial reform and to the reasonableness of the licensee's refusal to accept your offer of reply. We must reiterate that the issue in this case is not one concerning the personal qualifications of individuals to present viewpoints on controversial issues of public importance or of any obligation on the part of the licensee to afford reply time to any particular group or individual.[1] In this regard, with exceptions not applicable here, no single group or person is entitled as a matter of right to present a viewpoint differing from that expressed on the station. *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 Fed. Reg. 10416 (1964). The issue properly before us here is rather whether the licensee, in its overall treatment of a controversial issue of public importance, has made a reasonable effort to obtain responsible representation of contrasting views. It has been determined that Stations KNX and KNX–FM did in fact take such reasonable steps to present contrasting viewpoints thereby complying with the fairness doctrine and that upon the facts here presented, the Commission will not substitute its judgment for that of the licensee in matters of spokesman selection. Your petition raises no new or relevant questions of material fact to prompt reconsideration of that decision.

In light of the foregoing, your petition for reconsideration IS DENIED.

Commissioner Johnson dissented and issued the attached statement; Commissioner H. Rex Lee abstained from voting.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

[1] Similiarly, although our prior review of this matter took note of indications of personal animus existing between the parties, our ruling was in no way premised upon or influenced by that finding, nor do we deem such evidence relevant to any reconsideration here.

109–025—73——2

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

It would appear that the Commission majority is bent upon gutting the fairness doctrine even before its re-evaluation is complete. (see *Notice of Inquiry into the Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications* Act, 30 FCC 2d 26, June 9, 1971). I refer to the dangerous trend in recent cases toward the finding that zero minutes of time devoted by a broadcaster to one side of a controversial issue can somehow constitute a "reasonable effort" on the part of the licensee. The Commission said as much last week, over my dissent, when it found that zero minutes of coverage of the Presidential campaign of People's Party Candidate Dr. Benjamin Spock by two major networks in the last three weeks of the campaign constituted "fairness." *Letter to People's Party*, ——— FCC 2d ——— (November 6, 1972). It does so once again in this case, by its decision that zero times given to the expression of views opposed to a CBS radio editorial can also, by some incomprehensible chain of logic, constitute a "reasonable effort."

In this case, CBS, the licensee of radio stations KNX and KNX-FM, Los Angeles, broadcast an editorial critical of the California judiciary on October 29, 1969. At the end of that editorial, I will assume the station added the usual trailer regarding the station's offer to broadcast "opposing views." In any event, licensee claims that it sent copies of the editorial, along with an offer of time to reply, to some 550 individuals and groups in its service area, but that none of the 550 responded. The only person to request time from the station to reply to the editorial was Thomas M. Slaten—and his request was refused. To all intents and purposes, then, the listeners of KNX-AM and FM were left with the impression that no one opposed the licensee's viewpoint, since zero time was allotted by the station to any other side. In my absence last April, the Commission found that CBS had not run afoul of the fairness doctrine. Today the majority refuses to reconsider that decision.

I dissent.

In its *Cullman* decision, 40 FCC 576 (1963), this Commission found that a station was required to make a *positive* effort to air views on controversial issues opposed to those already presented in the course of its programming. At the same time, the Commission stated that in all applications of the fairness doctrine, "the type of programming and the amount and nature of time to be afforded is a matter for the good faith, reasonable judgment of the licensee, upon the particular facts of his situation." 40 FCC, at 577. *Nowhere*, however, has it been stated that a licensee, having presented one side of a controversial issue, could then exercise its "good faith, reasonable judgment" to refuse to devote *any* time to the other. Yet that appears to be the Commission's holding today.

What the majority in this case seems to forget is that the fairness doctrine was not designed for the benefit of the licensee, or even for the benefit of the party who claims the right to respond. It is for the benefit of the viewing or listening public, and represents the obligation of the licensee, the public trustee of the airwaves, to inform that public as to the various viewpoints that may exist on controversial issues.

This obligation is especially important when the viewpoint is one being directly advocated by the licensee itself.

When the whole question of editorializing by broadcast licensees was considered by this Commission in 1947, it was, in part, "to determine whether the expression of editorial opinions by broadcast station licensees on matters of public interest and controversy is consistent with their obligation to operate their stations in the public interest." The answer was *yes*, editorializing was consistent—but only so long as the licensee could ensure that opposing viewpoints were sufficiently represented to prevent an "overemphasis on the side of any particular controversy which the licensee chooses to espouse." *Report on Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949). Thus, at a very early juncture, the Commission recognized the thin line it would have to walk between allowing a licensee to propagandize freely—with the incredible powers of the broadcast media—and stifling a licensee's First Amendment rights to freedom of expression. It sought a rather delicate balance between these conflicting factors, and the fairness doctrine was the result.

For the fairness doctrine to operate to protect the public interest, there must be some indication that the licensee has actually presented some aspect of each side of a controversial issue. Merely soliciting replies to on-air editorials cannot be a major factor in a station's "good faith effort" to comply with the fairness doctrine, whether CBS solicits from 500 or even 5000 persons or groups.

This Commission often plays numbers games over fairness issues, in which it attempts to decide such questions as whether six and one-half minutes of news coverage might sufficiently balance some 15 one minute spots. But one game that has not been played until now has been the determination that a licensee has made a sufficient "effort" at fairness on the basis of the weight of its "extra-broadcast" activities, when the time presented on the air has been zero.

I do not claim that CBS had an absolute obligation to air the particular views expressed by Mr. Slaten. It *did*, however, have an absolute obligation to inform the public of views on "the California judiciary" counter to its own by one means or another. Since there is not one scrap of evidence that CBS ever did so on its own, and Mr. Slaten *did* request time to reply to its editorial, I believe, in this instance, he should have been given that time. A contrary result would make a mockery of the fairness doctrine.

I dissent.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
LOS ANGELES CHAPTER OF THE NATIONAL ORGANIZATION FOR WOMEN—LOS ANGELES, CALIF.
Concerning Fairness Doctrine Re Station KNX

JANUARY 17, 1973.

MS. GEORGIA FRANKLIN,
Los Angeles Chapter, N.O.W.,
8864 West Pico Boulevard,
Los Angeles, Calif.

DEAR MS. FRANKLIN: This is in response to your complaint filed on behalf of the Los Angeles Chapter of the National Organization for Women, stating that Station KNX has refused to comply with the fairness doctrine. Your letter, referring to a broadcast of December 22, 1971, did not reach the Commission until July 31, 1972. Because the staff was for many months swamped with complaints and inquiries related to the 1972 primaries, conventions and general elections, which would have become moot unless they were resolved at once, it was necessary to postpone consideration of many other complaints, and we are only now able to respond to some which we normally would have dealt with much earlier.

You state that KNX broadcast a program titled "Spectrum" on December 22, 1971 in which commentator Jeffrey St. John stated that the Women's Liberation movement "is largely a lie and a hoax," that its advocates present "dogmatic sloganeering" for their evidence, "and that Women's Liberation is a smokescreen for the advancement of Socialist-populist-political ideas."

You enclose copies of correspondence with Messrs. Ackerman and Nicholaw of CBS, the licensee of KNX, in which they state in substance that CBS has provided fair coverage on the subject of Women's Liberation, both in the "Spectrum" series and other broadcasts, including news programs. As examples of specific programs in which contrasting views were presented, Mr. Ackerman cites broadcasts on October 2, 1971 and January 4, 1972, by Shana Alexander and commentaries by Nicholas von Hoffman.

The fairness doctrine requires a station which presents one side of a controversial issue of public importance to afford reasonable opportunity for the presentation of contrasting views in its overall programming, which, of course, includes statements or actions reported on news programs. No particular person or group is entitled to appear on the station, since it is the right of the public to be informed which

the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee has acted reasonably and in good faith. Where complaint is made to the Commission, the Commission expects a complainant to submit specific information including, *inter alia*, reasonable grounds for the claim that the station or network broadcast only one side of the issue in its overall programming.

In the present case you have not provided grounds for concluding, in light of the CBS responses, that KNX has failed to afford reasonable opportunity for presentation of views in contrast to those expressed by Mr. St. John. Accordingly, no further action by the Commission appears warranted at this time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ACCURACY IN MEDIA, INC., WASHINGTON, D.C.
Concerning Fairness Doctrine Re NBC

JANUARY 19, 1973.

ACCURACY IN MEDIA, INC.
501 13th Street NW.,
Suite 1012,
Washington, D.C.

Attention: Mr. Abraham H. Kalish, Executive Secretary.

GENTLEMEN: This will refer to your letter of complaint, dated August 21, 1972, concerning an NBC documentary program on the narcotics traffic in Southeast Asia which was presented on July 28 as part of the network's CHRONOLOG series.

You state that the documentary in question presented three controversial issues of public importance: (1) whether this country's Southeast Asian allies—Thailand, Laos, and Vietnam—are important sources of illegal heroin on the U.S. market; (2) charges that U.S. Government agencies have been involved in assisting those trafficking in narcotics in Southeast Asia and that the U.S. Government has not been aggressive in fighting such traffic for fear of hindering the war effort; and (3) charges that the governments of Thailand, Vietnam, and Laos are not fully cooperating in combating the narcotics traffic, charges which have led to legislative proposals to terminate foreign aid to those countries. You allege that "all these issues were deliberately treated in a manner that was intended to lead the viewer to the conclusion that America's allies were important sources of heroin for the American market, that the governments of Thailand, Laos, and Vietnam were not cooperating adequately in putting down the traffic and that U.S. agencies were themselves involved in supporting the traffic." You have further concluded that the program "fails to meet the Fairness Doctrine requirement that the licensee provide a balanced presentation of all sides in programming that deals with controversial issues of public importance."

You cite the following as indicating that NBC, in its news programming, has avoided presenting evidence which would lead to contrary conclusions concerning the issues in question: that NBC News failed to cover the Thai Government's destruction of 26 tons of opium on March 7, 1972 and later referred to such destruction in its documentary as a "well-publicized extravaganza"; that while NBC News did not cover General Lewis W. Walt's Congressional testimony of August 14, 1972, praising the anti-narcotics efforts of the Thai Government, the NBC program TODAY on that date featured a 5-minute

interview with author Alfred McCoy, who discussed his thesis that Southeast Asia has become a main source of illegal heroin bound for the U.S. and that both U.S. and Asian government officials are implicated in such traffic and hence are not taking steps necessary to halt it; that the documentary quoted a "professional estimate" that one-third of the illegal heroin in the United States is from Southeast Asia, ignoring other estimates which are much lower and which cite Turkey as the source of 80 per cent of the U.S. supply; that the documentary ignored a comparison which would have shown that Turkey, not Southeast Asia, has been the primary source of illegal narcotics and that the Thai, Laotian and South Vietnamese Governments have all moved more rapidly than Turkey in taking steps to curb the traffic; that while the documentary discussed charges that the CIA and U.S. military forces were involved in the narcotics traffic, no denial of such charges was presented; that while the documentary discussed charges that the U.S. government has deliberately ignored the narcotics problem in Southeast Asia to avoid any deleterious effect on the war effort, no official refutation of such charges was presented; and that while the documentary presented the views of three Congressmen advocating the termination of aid to Thailand because of its alleged failure to deal with the illegal narcotics traffic, no opposing views were presented.

You also state that the documentary presented a one-sided and misleading impression that the Communist governments of mainland China and North Vietnam have cracked down on narcotics traffic, making no mention of charges to the contrary.

You request that the Commission investigate the CHRONOLOG documentary and order NBC-owned stations and affiliates to offset the one-sided presentation of the program with appropriate contrasting views.

Where complaint is made to the Commission under the fairness doctrine, the Commission expects a complainant to submit specific information indicating, *inter alia*, the specific issue or issues of a controversial nature of public importance presented by the station or network; the basis for the claim that the issue or issues were controversial issues of public importance, either nationally or in the station's local area at the time of the broadcast; the basis for the claim that the station or network broadcast only one side of the issue or issues in its overall programming, and whether the station or network has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on that issue or issues. The Commission also requires that a complainant first bring his fairness complaint to the attention of the station or network involved before seeking this agency's review.

In this connection the Commission notes that your letter to NBC concerning CHRONOLOG was not cast in terms of the fairness doctrine; in fact, it made no mention of the fairness doctrine and was almost exclusively concerned with the accuracy of the material presented and the ommission of facts which you believed should have been included. Thus, the letter appears to have been primarily a complaint on matters of news judgment and propriety of certain comments. The Commission has made clear that "As a public trustee, the broadcaster must scrupu-

lously eschew intentional and deliberate falsification (slanting or rigging) of the news." However, as you know, the Commission has stated many times that it will not substitute its editorial or news judgment for that of a licensee; that it is "not the national arbiter of the 'truth' of a news event" and that "It cannot properly investigate or determine whether an account or analysis of a news commentator is 'biased' or 'true.'" The Commission will make investigation of such charges only where it has received extrinsic evidence of deliberate rigging or slanting. See enclosed copy of *Letter to Mrs. J. R. Paul.*

Thus, the Commission cannot intervene in this case on the basis of your allegations that the documentary program was in part inaccurate or omitted certain facts which should have been included, or that the commentator drew unjustified conclusions.

Turning now to your letter to the Commission which is based upon the fairness doctrine, we note that although you state that NBC presented only one side of three controversial issues of public importance during the CHRONOLOG broadcast in question, you have not claimed that in its overall programming (which includes newscasts, interviews, round tables, debates and speeches) NBC has presented only one side of these issues. As you know, the fairness doctrine does not require a licensee to present contrasting views on a controversial issue in a single program or series of programs. What is required is that the station or network take affirmative steps to afford a reasonable opportunity for presentation of contrasting viewpoints on such issues in its overall programming. Moreover, the complainant is expected to "state the basis for the claim that the station has presented only one side of the question." See Part I of the Commission's Public Notice of July 1, 1964 titled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

Accordingly, it appears that on the basis of the information which you have submitted to the Commission, no further action on your complaint is at this time warranted.

The Commission regrets the delay in answering your letter. However, due to staff limitations and the increased workload of the Commission, particularly during the 1972 election campaigns, this response could not be prepared and forwarded until the present time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ANTHONY R. MARTIN-TRIGONA, CHAMPAIGN, ILL.
Concerning Fairness Doctrine Re Station WLS, Chicago, Ill.

JANUARY 22, 1973.

MR. ANTHONY R. MARTIN-TRIGONA,
Box 2058, Station A,
Champaign, Ill.

DEAR MR. MARTIN-TRIGONA: This will refer to your letter of complaint, dated April 15, 1972, regarding two particular editorials broadcast by Standard Broadcast Station WLS, Chicago, Illinois. You state that the editorials in question "involved airline hijacking news treatment, and drugs" and that your written request for time to air "rebuttals" to these editorials was refused by the station for the stated reason that neither editorial dealt with a controversial issue. You also state that the editorial concerning news coverage of airline hijacking "flatly stated that a licensee policy of news censorship and management control of the news department had been implemented (by WLS) to control news." You object to this "stunning policy of censorship." You further state:

> . . . last year the Commission ruled favorably on a complaint I filed against the station. Since then, there has been a change in management at the station and I believe the new management is trying to harass me for having embarrassed the station and exposed news fraud. Under these circumstances the actions of the new managers is shocking and illegal and constitutes improper intimidation of a listener and consumer advocate.

You ask the Commission to review these matters under the fairness doctrine and to take appropriate action.

Where complaint is made to the Commission under the fairness doctrine, the Commission expects a complainant to submit specific information in support of his general allegation that a station has failed to comply with fairness. In addition to the particulars which you have furnished the Commission, the following specific information is required before any action may be taken: (1) the specific issue or issues of a controversial nature of public importance presented by the station (you generally state that the editorials in question concerned "airline hijacking news treatment, and drugs"; however, a more detailed and specific statement is needed to sufficiently identify the particular issue or issues which were presented and to which you refer); (2) the date and time when the editorials in question were broadcast; (3) the reasonable grounds for your claim that the issue or issues were controversial issues of public importance, either nationally or in the

station's local area at the time of the broadcasts (as in (1) above, a more specific statement is needed to clarify the particular subject and substance of your complaint); (4) the basis for your claim that the station has broadcast only one side of the identified issue or issues in its overall programming (an accurate summary of the particular view or views broadcast and presented by the station should be included); and (5) copies of your correspondence with the station or its licensee indicating the specific reasons for its refusal to comply with your request. Absent such detailed and specific evidence of failure to comply with the requirements of the fairness doctrine, it would be unreasonable to require licensees to disprove vague and general allegations such as those set forth in your instant letter. See *Allen C. Phelps*, 21 F.C.C. 2d 12 (1969). If, after communicating with the licensee regarding the above particulars of your complaint, you are not satisfied that it has fulfilled its obligations and the Commission is so advised in pertinent, factual detail, as set forth above, it will in appropriate cases request a statement from the licensee and provide the complainant with an opportunity to comment on the licensee's statement if the complainant so desires. Thereafter, on the basis of all available information, the Commission will attempt to determine whether the licensee's actions under the circumstances violated any rule or policy of the Commission.

It should be noted in this regard that although the fairness doctrine requires broadcast licensees to afford a reasonable opportunity for the presentation of contrasting views upon presenting one side of a controversial issue of public importance, it is the responsibility and within the discretion of the licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on that issue. The Commission will review fairness complaints only to ascertain whether the licensee can be said to have acted reasonably and in good faith in making such determinations.

With regard to your objection to the licensee's alleged policy of management control of the news broadcast by its station, it cannot be determined from the facts which you have submitted whether such licensee procedure is violative of any Commission rule or policy. You fail to state with sufficient particularity the specific licensee policy to which you refer and the basis or grounds for your allegation that such policy constitutes unlawful "censorship". Absent a more detailed statement of such particulars, no Commission action can be taken at this time. It should be noted, however, that as a general rule the Commission does "not sit to review the broadcaster's news judgment, the quality of his news and public affairs reporting, or his taste." *In re Complaints concerning Network Coverage of the Democratic National Convention*, 16 F.C.C. 2d 650, 654 (1969).

Your letter also fails to state any pertinent or relevant facts in support of your allegation that the management of WLS has been "trying to harass" you "for having embarrassed the station" in a matter previously before the Commission. It should be noted here that the station's refusal of your request for time to air "rebuttals" to its editorials does not in and of itself evidence any improper licensee conduct for the Commission has consistently ruled that the fairness

doctrine does not entitle any particular person or group to appear on a station as a matter of right. It is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of an individual to broadcast his own particular views.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

The delay in forwarding this response, due to staff limitations and the Commission's increasing workload, is regretted.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
DONALD C. SKONE-PALMER, TUJUNGA, CALIF.
Concerning Fairness Doctrine Re CBS
Television Network

JANUARY 23, 1973.

Mr. DONALD C. SKONE-PALMER,
7147 Appersen Street,
Tujunga, Calif.

DEAR MR. SKONE-PALMER: This is in reply to your letters of November 28 and December 10 and 28, 1972 concerning a complaint against CBS.

You state that the program called "Sixty Minutes" broadcast on the CBS television network at 6:00 p.m. on November 26, 1972, was "slanted, unfair, highly biased and impossible of proof"; and that the CBS reporters Morley Safer and Mike Wallace, for that segment of Sixty Minutes dealing with our involvement in Vietnam, referred to such involvement as "futile" and "immoral". You further state that you "wrote to CBS demanding some time to set the record straight and their answer was to excerpt some of my letter(s) in their next programs"; and that you subsequently wrote to CBS stating that the excerpting "was not enough and again demanded time to present your views."

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communicatons Act the Commission is specifically prohibited from censoring broadcast material.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how

best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

Neither the Communications Act nor the Commission's Rules require the separation of interpretive comment from news, and the individual broadcast licensee is not required to label programs which interpret the news or contain expressions of opinion. Legislation designed to require broadcasters to identify the nature and source of the responsibility for editorial and interpretive comments has been considered by both Houses of Congress in the past, but none has been enacted.

Before the Commission can take appropriate action with respect to fairness doctrine complaints it must receive specific information setting forth reasonable grounds for the complainant's conclusion that a licensee in its overall programming has not attempted to present opposing views on controversial issues of public importance. *Allen C. Phelps*, 21 FCC 12, 13 (1969).

You have not provided any grounds for concluding that CBS in its overall programming has failed to afford reasonable opportunity for the presentation of views in contrast to those on the program in question.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
U.S. COALITION FOR LIFE, EXPORT, PA.
Concerning Fairness Doctrine Re Station
WBZ–TV, Boston, Mass.

JANUARY 17, 1973.

MS. RANDY ENGEL,
U.S. Coalition for Life,
165 Hills Church Road,
Export, Pa.

DEAR MS. ENGEL: This is in response to your letter with enclosures dated July 27, 1972, stating that Station WBZ–TV, Boston, broadcast a program on February 19, 1972 featuring a spokesman for an organization called Zero Population Growth, Inc., who advocated limiting births to two children or less and the need for birth limitation, and stressed "the crisis of overpopulation." You state that the questions of population and population explosion are issues of national importance as evidenced by the appointment of a Presidential Commission on Population Growth and the American Future, among other things. You state that you have received no answer to your request to the licensee of the station for an opportunity to present an opposing viewpoint on population.

Please excuse our delay in answering your letter. It came during the months when our limited staff was swamped with complaints and inquiries relating to the conventions, primary elections and the general election, which required immediate resolution lest they become moot. Thus, we were forced to defer consideration of many other complaints and are only now attempting to deal with them.

Although your complaint does not state specifically that it is based on the fairness doctrine, it is apparently so based, and will be considered in that light.

The fairness doctrine requires a broadcast licensee who presents one side of a controversial issue of public importance to afford reasonable opportunity for presentation of contrasting views. Contrasting views need not be presented on the same program or series of programs, provided that the licensee attempts to do so in its overall programming, which may include news programs, interviews, round table discussions, debates, speeches, etc. Nor does the fairness doctrine require the licensee to present any particular person or group as spokesman for a viewpoint, since the goal of Congress and the Commission is that the public be informed, rather than that any particular individual be afforded access to the air. The Commission's role is not to make such judgments, which are the responsibility of the licensee in this area, but only to determine whether the licensee has acted in good faith and

with reasonable judgment. The Commission's interpretation of the fairness doctrine and illustrative rulings are set forth in its Public Notice of July 1, 1964, a copy of which is enclosed.

You will note that in column 3 of the first page of printed text, the Notice states what information the Commission expects a complainant to furnish. Such information includes the basis for the complainant's belief that in its overall programming the licensee has not afforded reasonable opportunity for presentation of views in contrast to those which occasioned the complaint.

Since you have furnished no grounds for a conclusion that WBZ–TV has not in its overall programming presented views in contrast to those which you state were broadcast on February 19, 1972, no further Commission action appears to be warranted at this time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73-19

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of KENNITH A. CASEY, TRADING AS FRANKLIN BROADCASTING CO., RUSSELLVILLE, ALA. Requests 1500 kHz, 1 kW, DA, Day For Construction Permit	File No. BP-18225

MEMORANDUM OPINION AND ORDER

(Adopted January 4, 1973; Released January 10, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has before it for consideration (i) the above-captioned application for a construction permit; (ii) a petition to deny filed by Franklin Broadcasting, Inc., licensee of station WWWR, Russellville, Alabama; and (iii) pleadings in opposition and reply thereto.[1]

2. The petitioner bases its claim of standing as a party in interest on the allegation that the proposed operation would be located within its service area and compete with it for listeners and advertising revenue. The Commission finds that the petitioner has standing as a party in interest within the meaning of section 309(d)(1) of the Communications Act of 1934, as amended, and section 1.580(i) of the Commission rules. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 9 RR 2008 (1940).

3. The petitioner contends that the applicant has demonstrated such negligence, carelessness, or disregard of the Commission's processes that it is questionable whether he can be relied upon to fulfill his responsibilities as a licensee. Specifically, it states that the applicant violated the Commission's publication requirements by publishing a local notice of the filing of his application approximately six months after the application was tendered for filing and not within the time provided,[2] by notifying the Commission more than 20 days after the statement was due that he had published the notice,[3] and by failing to have available for public inspection a copy of the application at the location he specified in the notice. In addition, the petitioner argues

[1] The applicant's opposition to the petition to deny was not filed timely in accordance with section 1.45(a) of the Commission rules, but it has been treated and considered on the merits because it contains facts which we think are necessary to enable us to reach a decision in this matter.

[2] Section 1.580(c) of the rules provides that notice shall be published within a three-week period immediately following the tendering for filing of an application, or, if there is no daily newspaper published in the community, within the four-week period immediately following the tendering for filing of the application.

[3] Section 1.580(h) provides that within seven days of the last day of publication of the notice required by 1.580(c), the applicant shall file a statement with the Commission setting forth the dates and specifics of publication.

that Casey failed to reveal, in his power increase application for station WKAC, Athens, Alabama, the extent of his broadcast interests by not reporting that he had pending an application for Russellville. In light of these actions, the petitioner requests an inquiry into the character qualifications of the applicant.

4. In opposition to the petitioner, the applicant submitted an affidavit to the effect that he has never filed with the Commission any statement in which he knowingly made any misrepresentations of fact or omissions or attempts to conceal any fact or mislead the Commission. He attributes the delay in publishing a local notice to the fact that he waited for his attorney to give him the exact wording for the notice and that he received the information in December and had the notice published at that time. He states that the notice itself complied with the statutory requirements, and he asks the Commission, due to the above circumstances, to waive the timeliness provisions of its local notice requirement and to accept his publication as complying with the requirements. With respect to his failing to have a copy available for public inspection, the applicant claims that his attorney failed to carry out his instructions, and that once the applicant became aware of his attorney's inaction, he had a public copy made available.[4] In addition, he argues that despite the untimeliness of the local notice and tardiness in having a copy available for public inspection, a petition to deny was timely filed, thereby demonstrating that the petitioner was not prejudiced by the applicant's failure to comply strictly with the publication requirements. Moreover, Casey claims that there is no allegation that any other person was prejudiced because of the minor deficiencies cited by the petitioner. Finally, the applicant states that he made an honest mistake in failing to state, in the WKAC application to increase power, that he had filed an application for a standard broadcast facility for Russellville, but that the grant of his applications to increase power and renew the license of WKAC shows that he has the requisite character qualifications to be a licensee.

5. In a supplementary pleading, the petitioner claims that the applicant's character qualifications are questioned further by his business relationship with station WMSL, Decatur, Alabama. It contends that Casey, in response to a Commission inquiry in 1963, stated that he would sever his connections with WMSL in the event that his application for a station in Athens, Alabama, were granted. The petitioner argues that the applicant has remained chief engineer of WMSL and has not revealed this interest in his application. It states that a trade publication records that Mr. Casey is the chief engineer of WMSL, that a WMSL receptionist stated that Casey was the chief engineer, and that the applicant in its responsive pleading stated that he was employed at WMSL (AM, TV), Huntsville and Decatur, Alabama.

6. In response, the applicant states that in 1963, he resigned as chief engineer of WMSL(AM), in accordance with his intention expressed earlier in a letter to the Commission, but that he has remained chief engineer of WMSL(TV). He contends that he had been called upon to examine the equipment of WMSL(AM) not more than 10 to 15 times a year, and he did it voluntarily, without contractual

[4] After these episodes, the applicant retained new legal counsel.

109-025—73——3

obligation or remuneration. He claims that the very minor amount of work that he did for WMSL(AM) was in no way inconsistent with his letter to the Commission, and that it did not involve any conflict between the operation of WMSL(AM) and WKAC. In addition, the applicant states that he was not involved with the programming policies or financial management of WMSL(AM), and he submitted an affidavit stating that since the recent change in ownership of WMSL (AM), he has not performed and does not intend to perform any engineering services for the new licensee.

7. The applicant was admittedly late in complying with the publication requirements of our rules, in making a copy of his application available for public inspection, and in notifying the Commission that he had given local public notice. He has long since complied with these various requirements and, in view of his explanation for his initial failures and the fact that apparently no one was prejudiced by the late compliance, we will waive the strict time provisions of the rules, as requested by the applicant.

8. It is evident from the pleadings that the applicant carried out his 1963 commitment to the Commission to resign as chief engineer of WMSL(AM). He did, however, perform occasional engineering services for WMSL(AM) from 1963–1971, but received no compensation for these services and retained no managerial role with the station. Furthermore, there is no indication that the continuing relationship with WMSL involved any conflict of interest with his ownership of WKAC, Athens, Alabama, or violated any Commission policy or rule, and, accordingly, the applicant's performance of services for WMSL(AM) from 1963 to 1971 does not raise a question concerning his qualifications to be a licensee of the Commission.

9. In two separate charges, the petitioner claims that the applicant has been careless in complying with Commission processes and has violated section 1.65 of the rules. It states that the applicant, in 1968, submitted an application to increase power for WKAC but failed to state that he had pending an application for Russellville, and that the applicant, contrary to section 1.65, failed to amend the Russellville proposal to report the filing and subsequent Commission approval of an application for the assignment of WKAC from Kennith A. Casey, tr/as Limestone Broadcasting Company to Limestone Broadcasting Company, Inc. In response, the applicant contends that, in preparing the WKAC power increase application, he made an honest mistake in failing to report the Russellville application; and that he did not violate section 1.65 since the Commission was aware of both the assignment application and the Russellville application because the assignment application contained an exhibit advising the Commission of the pendency of the Russellville application.

10. The applicant's failure to report, in his WKAC power increase application, that he had pending his Russellville application was a violation of section 1.514 of the rules, which requires an applicant to provide all the information called for in a particular application, including other broadcast interests and applications pending before the Commission. However, we will accept the applicant's explanation that he made an honest mistake in failing to disclose his Russellville application and will not question his qualifications on the basis of

this single omission. With respect to the allegations regarding the applicant's WKAC assignment application, it is clear that the requirements of section 1.65 are not met by filing information in an application other than the instant application. In this instance, however, the assignment of WKAC from Casey as an individual to a corporation in which Casey is the 98 percent owner cannot be considered a substantial and significant change in information so as to come within the purview of section 1.65 of the rules. Accordingly, the applicant's failure to disclose the filing of his *pro forma* assignment application is not a violation of the Commission's rules.

11. The petitioner argues also that a financial issue be designated against the applicant because the costs of construction and operation are unreasonably low, and the bank loan has expired by its own terms. It states that the applicant has carelessly prepared and filed a number of balance sheets that raise a question as to the judgment, if not the intentions, of the applicant. It states that the original balance sheet did not categorize current and long-term liabilities; that an amended balance sheet credited the applicant with assets of its existing facility, WKAC, without showing the station's current liabilities; that the balance sheet indicates that the applicant is relying on contingent operating revenues from WKAC, but it does not state the station's operating expenses. In response to the petitioner, the applicant has submitted a number of financial amendments to bolster his initial financial showing. Defects and insufficiencies in the original financial information have been cured. The applicant's data may not have been totally complete and accurate, but no intent to deceive nor evidence of carelessness sufficient to warrant designation for hearing has been shown. A petitioner does not alone possess the right to file supplemental data, responsive and reply pleadings to support his position, and here the applicant, by preparing additional data, has demonstrated his financial ability. An updated balance sheet showing the individual assets, first-year current and long-term liabilities of Casey was submitted, together with a recent bank loan commitment letter, describing in detail the terms of the proposed loan. Examination of the data indicates that $54,075 will be needed to meet first-year construction and operation costs, consisting of equipment lease payments of $5,600, for equipment whose total cost over a period of years will be $17,320; loan payments with interest, $7,175; miscellaneous costs, including land clearance, $1,500; and first-year working capital, $39,800. To meet these requirements, the applicant plans to rely on available cash, $37,500, and a $35,000 bank loan for a total of $72,500. Since the applicant has substantiated his ability to meet his financial obligations, he is financially qualified.

12. Finally, the petitioner contends that the applicant's transmitter site is unsuitable and that he fails to meet the requirements set forth in the *Primer on the Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). Specifically, it states that a personal inspection of the transmitter site shows that a building is not available, the land is unsuitable due to the presence of cedar and scrub trees, and the ground is predominately limestone and, therefore, unfit for a ground system. The community surveys, the petitioner asserts, are defective because the people con-

tacted are not identified sufficiently, the suggestions are not listed, and the proposed programs are not related to the suggestions. The applicant, however, subsequently submitted new photographs of the transmitter site which show the area would serve adequately as a site, and he filed additional programming data which comply with Commission criteria. The applicant listed the suggestions received and the names of the more than 100 people contacted and formulated proposed broadcast services responsive to those needs. Petitioner has not pursued its challenge to these aspects of the application, as amended.

13. The failure of the applicant to observe the Commission's procedural requirements is, indeed, disturbing, and has given us occasion to examine the application with uncommon care. The substantive infirmities of the application have been cured by amendment, but there is no way the applicant can, at this point, purge the record of the procedural failures. The applicant's procedural lapses cannot be condoned or ignored, but, in the particular circumstances of this case, they do not raise in our minds a significant question of the applicant's fitness to be a licensee. We passed favorably upon the question of his fitness when, with this record before us, we granted his application for renewal of the license of station WKAC. We must, therefore, weigh the applicant's lapses against the public interest inherent in authorization of a new broadcast service to more than 50,000 persons in an area which only one radio station is now licensed to serve; the scales weigh heavily in favor of a grant. The applicant and the people he proposes to serve have already incurred the penalty of a four-year delay in action on the application because of the applicant's failure to meet deadlines and to place his application in a grantable posture. With the application now in a grantable posture, we cannot find justification for a refusal to grant the application solely on the basis of past procedural failures which, unlike substantive matters, cannot be cured by amendment. There are no unresolved questions of fact; the sole question is whether the applicant's procedural failures were so serious as to raise a substantial question as to his fitness to be a licensee. We have determined, in the exercise of our judgment, that they do not. We find, therefore, that the petitioner has raised no unresolved substantial or material questions of fact; that the applicant is fully qualified to construct, own and operate the proposed new station; and that a grant of the application would serve the public interest, convenience and necessity.

14. Accordingly, IT IS ORDERED, That sections 1.45(a), 1.526, 1.580(c), and 1.580(h) of the Commission's rules ARE WAIVED, the petition to deny filed herein by Franklin Broadcasting, Inc., as supplemented. IS DENIED, and the application of Kennith A. Casey, tr/as Franklin Broadcasting Company, IS GRANTED, in accordance with specifications to be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-55

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20054

In the Matter of LEON P. GORMAN, JR., RECEIVER ASSIGNOR and DUNEDIN BROADCASTING CO., ASSIGNEE For Assignment of License of Station WCWR-AM, Dunedin, Fla.	BAL-7538

JANUARY 17, 1973.

Mr. ELLIS J. PARKER, III, Esq.,
"Mount Pleasant" RR 2188,
Upper Marlboro, Md.

DEAR MR. PARKER: This refers to the petition to deny filed May 17, 1972 on behalf of James Brown against the application to assign the license for radio Station WCWR-AM, Dunedin, Florida from Leon P. Gorman, Jr., Receiver, to Dunedin Broadcasting Co. (BAL-7538). The subject application was accepted for filing by the Commission on March 16, 1972, and our Rules provide for the filing of petitions to deny within thirty days after the application had been accepted for filing by the Commission. Since Mr. Brown's petition was filed more than 30 days after issuance of the public notice of the acceptance for filing of the WCWR application, we are treating the document as an informal objection to the application. (See Sections 1.580(i) and 1.587 of the Commission's Rules)

Essentially, the petition alleges that your client, James Brown, made an offer to purchase the subject station on February 7, 1972, and that at the request of Leon P. Gorman, Jr., a sum of $10,000 was deposited as escrow "in a Clearwater [Florida] Bank" towards the purchase of WCWR-AM. Thereafter, on February 25, 1972, it is alleged that Mr. Brown's organization learned that Mr. Gorman intended to accept the offer of the present assignee, even though Mr. Brown's offer was larger than that of Dunedin Broadcasting Co. It is further alleged that the control over the sale of WCWR was not exercised by Mr. Gorman as Receiver but by the attorney for the owner of the assets of the station.

Petitioner requests that the Commission recognize him as a party to the assignment and that the present application be voided as a product of unauthorized control of the license by a person other than the licensee, Mr. Gorman. Finally, petitioner states that he made the only bona fide offer to Mr. Gorman which should be accepted by the trustee as directed by the Commission.

In the present case, the Federal District Court, Tampa, Florida, has exercised full control over the appointment of Mr. Leon P. Gorman, Jr. as Receiver and has conducted and approved the sale of the assets associated with WCWR-AM. In this connection, the Court has approved the sale of WCWR-AM to the present assignee, Dunedin Broadcasting Co., subject to our consent. The allegations raised by Mr.

Brown basically concern the negotiations for the sale of WCWR–AM between Mr. Gorman and the assignee. These negotiations and the final contract for sale have been passed upon and approved by the Court.

Section 310(b) of the Communications Act of 1934, as amended, states that in acting on an assignment or transfer of control application,

> . . . the Commission may not consider whether the public interest, convenience and necessity might be served by the transfer, assignment, or disposal of the permit of license to a person other than the proposed transferee or assignee.

Thus, under the Act, the Commission must only consider the qualifications of the assignee and can only act on the application that is before it. Since the Court in an exercise of its jurisdiction has approved the sale of WCWR–AM, we are precluded from going behind the Court's decision. Therefore, parties such as petitioner, not related to the application, who have expressed a willingness to purchase a station but whose offers were not accepted by the licensee must seek their remedies in appropriate local, state or federal courts. Therefore, the informal complaint filed by Mr. Brown against the assignment of license for radio Station WCWR–AM, Dunedin, Florida from Leon P. Gorman, Jr., Receiver to Dunedin Broadcasting Company is dismissed.

Having found, based on the information before us, that the assignee is, in all other respects, legally, financially, technically, and otherwise qualified and that a grant of the application will serve the public interest, convenience and necessity, we have this day granted the subject application.

Commissioner Johnson concurring in the result.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 72-1004

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of GREAT TRAILS BROADCASTING CORP. For Renewal of License for Stations WCOL and WCOL-FM, Columbus, Ohio	File Nos. BR-291 BRH-410

MEMORANDUM OPINION AND ORDER

(Adopted November 8, 1972; Released November 15, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT; COMMISSIONER HOOKS CONCURRING IN PART AND DISSENTING IN PART AND ISSUING A STATEMENT.

1. The Commission has before it for consideration (1) the above-captioned license renewal applications, filed by Great Trails Broadcasting Corporation (licensee); (2) a petition to deny the applications, filed August 31, 1970, by a number of persons individually and as agents for various organizations in Columbus, Ohio; (3) the licensee's opposition to the petition to deny, filed September 9, 1970; (4) petitioner's October 12, 1970, reply to the licensee's opposition; and, (5) a letter, filed October 23, 1970, on behalf of the licensee of Stations WCOL and WCOL-FM.

2. The petitioners describe themselves as individuals and community groups concerned with the protection of the rights and advancement of the interests of Black persons as well as the interests of the entire community. Petitioner Columbus Broadcasting Coalition, is a coalition of these groups working to improve the responsiveness of Columbus broadcasters to the Black community.

3. Petitioners state that the Great Trails Broadcasting Corporation (hereinafter referred to as "Great Trails") has failed to adequately ascertain the needs and interests of the Columbus Black community. They state that Great Trails' use of Welcome Wagon surveys in its ascertainment process is an example of the manner in which Great Trails denies less affluent Black residents a voice because the "Welcome Wagon operates basically in the upper middle income Anglo-Saxon areas." Petitioners further state that Great Trails has not sought the opinions of "the actively progressive Black community," and that Great Trails "does not understand that all Black people are not represented by the Urban League or other such 'civil rights' organizations."

4. Petitioners next state that Great Trails has failed to recognize the cultural needs of the Black community. They state that during negotiations, the management of Station WCOL said that the station wanted all disc jockeys "to have the same sound," and that this requirement that all announcers speak in the "white middle class way"

denies "Black Americans an opportunity to become involved in what might be called the most dynamic of all communications methods which influence the early and mid-teens of this country." Petitioners also state that the news presented on Station WCOL is inadequate and discriminatory. They state that more time is spent "telling 'about' the news" and on advertising than on actual news presentation; that identification by race on newscasts is limited to Black offenders, and that white children are treated with greater warmth and endearment than Black children on newscasts. In conclusion, petitioners state that the foregoing raises substantial and material questions of fact as to whether renewal of license for Stations WCOL and WCOL–FM would serve the public interest and, therefore, assert that a hearing on the renewal applications is required.

5. In its opposition, Great Trails initially states that many of the statements in the petition to deny are broad generalities which are incapable of a response. Nevertheless, with regard to its community survey, Great Trails states that six representatives of Black organizations were interviewed by its personnel. The licensee also states that the Welcome Wagon surveys were only a part of its ascertainment process and that it conducted a mail survey directed to all socio-economic classes of the community in proportion to each classes' presence in the community. Great Trails also states that its community survey revealed problems in the community directly related to the groups petitioners claim to represent, including racial relations, housing, job training, drugs and disease, and mass transportation. Great Trails denies that it has a policy of excluding voices which are not white and middle class. The licensee states that individuals of varying backgrounds, races, and religions are presented by the stations, and that the stations presently employ Black announcers.[1] Further, with regard to its newscasts, Great Trails denies any policy or pattern of identifying by race Black persons "alleged to have committed some offense against the white sociological order" or of treating Black children with less warmth or endearment than white children. The licensee also points out that no examples of such conduct accompanied the allegations in the petition to deny. Affidavits of employees of Station WCOL attesting to the lack of the alleged policies discriminating against Black persons are included in the response. Great Trails also details the public affairs programming which it has presented, including programs discussing the Vietnam war, student opinion on various topics, alcoholism, venereal disease, racial relations, and other topics. Great Trails also submits texts of many public service announcements involving organizations within the Black community which it has presented.

6. In reply, petitioners include an affidavit of Miss Shirley Wiley, one of the six Black persons Great Trails stated in its response was interviewed in the community survey, stating that she was never interviewed "in regard to the ascertainment of community needs and interests." Furthermore, petitioners state that even with Black persons who were interviewed, there was only a "one shot interview," never a continuing dialogue with the station. The petitioners characterize the

[1] One of WCOL's news editors and two of its four disc jockeys are Black.

programs presented by Great Trails dealing with the Viet Nam war, brotherhood, urban problems, racial relations, drugs, etc., as "racial tokenism" inadequate to alleviate the frustration of Blacks and inadequate to dispel long-standing racial prejudices. Petitioners further state that Great Trails discriminates against Blacks in pay, promotion, and employment conditions, stating that during the first one-third of the expiring license period, Great Trails had no Black employees, and even now, it has only eight percent Black employees. Petitioners also state that Great Trails does not seek good public relations in the Black community. As examples, they cite what they consider the hostile attitude of the manager of Station WCOL to Mr. Tony Rocciano, Coordinator of the Columbus Broadcasting Coalition, and failure of the station to give news coverage to activities of the Reverend Johnny Bryant's church, a WCOL advertiser. In conclusion, the petitioners again request that the renewal applications be designated for hearing.

7. In a letter dated October 23, 1970, Great Trails replied to what they considered a new charge raised in petitioners' reply—the issue of whether or not Miss Shirley Wiley was interviewed for the community survey. Attached to the letter was an affidavit of Collis A. Young, the general manager of Stations WCOL and WCOL–FM, stating that the employee who interviewed Miss Wiley is no longer employed by the station, but that a survey form indicates that Miss Wiley was interviewed by the former employee on April 6, 1970.

8. Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d)(1), provides for a hearing on an application where specific allegations raise a substantial and material question of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest, convenience and necessity. Petitioners, as the foregoing statement of facts discloses, have raised three separate charges concerning Great Trails' operation of WCOL–AM and WCOL–FM. We note at the outset, however, that the discussion in petitioners' pleadings is only directed at Great Trails' operation of WCOL–AM. We find, therefore, that petitioners' pleadings do not raise any issues regarding Great Trails' operation of WCOL–FM. Accordingly, petitioners' petition to deny, insofar as it relates to WCOL–FM's license renewal application, will be denied on the basis of its pervasive lack of specificity.

9. Similarly, petitioners' pleadings, insofar as they relate to Great Trails' operation of WCOL–AM, are also characterized by general allegations and are devoid of any specific facts. As indicated above, to merit a hearing under Section 309(d), petitioners must go beyond mere generalizations and allege some specific facts sufficient to show that a grant of the application under consideration would be *prima facie* inconsistent with the public interest. Thus, petitioners' petition to deny WCOL–AM's license renewal application also warrants summary denial because of its pervasive lack of specificity.

10. Petitioners charge Great Trails with conducting an inadequate community survey. Examination of Section IV of WCOL's application shows that the applicant compiled a profile or demographic study of its service area. This study included data on such matters as projected county populations for the Columbus market, racial statistics,

age distribution within the area, industry employment, income distribution, characteristics of the labor force, and school and university registration data. The applicant also listed the name, location, and chief executive officer of approximately 300 civic, social and professional organizations. In compiling its general audience survey, Great Trails mailed 550 questionnaires to persons in four socio-economic groups ("upper" (5%), "above average" (15%), "average" (52%), and "below average" (28%).) The number of questionnaires directed to each group was in proportion to that group's representation in the Columbus area. Thus, 28 questionnaires were directed to individuals in the upper socio-economic group, 82 to persons in the above average group, 286 to people in the average bracket, and 154 to individuals in the below average group. The selected citizens were asked their opinions regarding the significant needs and problems of Columbus and how these problems could be dealt with. In addition, Welcome Wagon representatives, in cooperation with WCOL, conducted daily radio surveys throughout the year. Approximately 12,000 people per year were contacted in this fashion. The Welcome Wagon representatives mailed their reports to the station on a daily basis. Finally, management level personnel of Great Trails personally interviewed 103 citizens active in various civic, educational and eleemosynary organizations. Of this number, five or six interviewees (depending on whether Miss Wiley is included) were affiliated with "Negro-oriented groups." In addition to persons connected with Black groups, Great Trails asserted that it consulted a number of Blacks who were active in organizations which were not specifically Negro-oriented.

11. The Commission requires a *bona fide* effort by broadcast licensees to inform themselves of community problems through consultations with a cross-section of community leaders and a random sample survey of members of the general public. Here, the licensee has developed the demographic composition of the area its stations serve, determined the groups representative thereof and interviewed leaders of those groups. The licensee has also conducted a general public survey, has analyzed and evaluated the problems ascertained through these surveys and has proposed programming designed to meet these problems. It is, therefore, concluded that Great Trails has established that it is aware of the problems of the area to be served and that it will program its stations to meet those problems.

12. When a thorough community survey—such as the one presented here—has been conducted, more than general disagreements as to the methodology utilized and the conclusions reached is necessary to form the basis of a *prima facie* case for denial of a license renewal. As we have held in the past, the proposition that a community survey must mirror the exact racial makeup of the community must be rejected. *Universal Communications Corporation*, 29 FCC 2d 1022, 1026 (1971). Rather, we require licensees to interview a broad cross-section of community leaders, including minority group leaders. Great Trails, as disclosed above, has done so in this case. Further, notwithstanding the fact that the purpose of the interview with Miss Wiley may not have been made entirely clear, we do not believe that one deficient interview renders an otherwise valid survey unacceptable. Additionally, the technique utilized by Great Trails of a socio-economic apportionment

or recipients of its general public survey appears to us meritorious, not deficient.

13. Petitioners also charge Great Trails with discriminatory programming practices and with a failure to program for Columbus' black community. Initially, we note that petitioners' allegations that the stations' newscasts were inadequate and discriminatory are conclusory in nature and unsupported by specific examples. Great Trails, on the other hand, states that it has express policies in this area to the contrary and there is nothing to indicate that these policies are not followed. Furthermore, as the foregoing facts reveal, Great Trails, during the license period expiring October 1, 1970, did present programming concerning problems in the Columbus community, including programming relevant to Columbus' minority community.

14. For instance, Great Trails has presented several vignettes concerning problems which it determined to be of local importance during its past license term. By way of example, Great Trails presented vignettes entitled "Legal Tips," featuring material from the Franklin County Legal Aid and Defenders Association, and "Brotherhood," featuring material promoting racial harmony, each of which were presented approximately 50 times per month during seven months in 1969. Similar programs dealing with health and school drop-out problems were also aired. A series on cultural history discussed the careers and contributions of many Black-Americans, *e.g.*, George Washington Carver, W. C. Handy, Ralph Bunche, Louis Armstrong, Ethel Waters, Garrett Morgan, John Hope Franklin, Sidney Poitier, and Whitney Young. WCOL also presented "Ohio State University Forum," a weekly 30-minute program presenting Ohio State University faculty and special guests discussing varied topics of current interest, and "The Place," a 30-minute program featuring 25 Columbus students who discuss such topics as drugs, marriage, military service, human welfare, etc., using music for emphasis. In the current renewal applications, Great Trails states that WCOL will present "Drugs," a program warning listeners about the dangers of narcotics; "Education," a program encouraging students to remain in or return to school, and "Cultural History," a program highlighting the history of various racial groups in Columbus by noting contributions to society by members of those groups. "Ohio State University Forum" and "The Place" will continue to be aired on WCOL.

15. Upon the basis of the above facts, the Commission is of the opinion that adequate reasons have not been advanced to justify designating Great Trails' license renewal applications for hearing on programming issues. As noted in *Chuck Stone* v. *Federal Communications Commission*, D.C. Cir., No. 71-1166, Slip Opinion pp. 18-21 (June 30, 1972):

> **How a broadcast licensee responds to what may be conflicting and competing needs of regional or minority groups remains largely within its discretion. It may not flatly ignore a strongly expressed need; on the other hand, there is no requirement that a station devote twenty percent of its broadcast time to meet the need expressed by twenty percent of its viewing public. Until this problem is addressed in a rule-making procedure, the scope of FCC review remains whether or not the licensee has reasonably exercised its discretion.**

As the Court further noted:

> The Commission found, and we agree, that plaintiffs' objections here lack the requisite specificity. They are largely conclusory and in most instances are not tied to specific programming deficiencies. Where they are so tied, they fail to indicate whether non-blacks are accorded different, more positive treatment. For plaintiffs simply to object to the quality of WMAL–TV's programming in general and conclusory terms offers the Commission little assistance in terms of the guidelines which it requires to implement policy changes. Furthermore, such generalized criticisms run the risk of turning the FCC into a censorship board, a goal clearly not in the public interest. Of course, there must exist in this area a delicate balance between the maintenance of a free competitive broadcast system and reasonable restrictions on such freedom in the public interest, in view of the scarcity of airwaves for broadcasting. In the absence of a competing broadcast application situation, where a hearing is required, plaintiffs bear a substantial burden of specificity, a burden they have not met in the case at bar.

16. Petitioners also charge Great Trails with discriminatory hiring practices. In so doing, however, petitioners have merely noted that Great Trails only employs eight percent blacks on its staff. As we stated in *The Evening Star Broadcasting Company* (WMAC–TV), 27 FCC 2d 316 (1971), *affirmed sub nom. Chuck Stone* v. *Federal Communications Commission*, D. C. Cir. Case No. 71–1166, June 30, 1972, rehearing denied September 1, 1972, simply indicating the number of minorities employed by a licensee, without citing specific instances of discrimination or a conscious policy of exclusion, is insufficient grounds to require an evidentiary hearing. Furthermore, while an extremely low rate of minority employment may raise questions requiring appropriate administrative inquiry, as noted by petitioners eight percent of Great Trail's staff is composed of minorities. We are of the opinion that this minority employment profile is within a range of reasonableness when considered in conjunction with the minority population in the Columbus standard metropolitan statistical area, which is 11.6 percent black. 1970 Census, General Population Characteristics, PC (1)–B Series (October 1971). Moreover, striving for a certain "sound" is not equivalent to discrimination against members of some racial groups. As noted above, WCOL presently employs two black announcers. We conclude, therefore, that the pleadings in this case do not establish any substantial and material questions of fact regarding Great Trails' employment practices.

CONCLUSIONS

17. Section 309(d) of the Communications Act provides for the grant of a license renewal application where the Commission finds, after full consideration of all pleadings, that there are no substantial and material questions of fact and that a grant of the application would be consistent with the public interest. Section 309(d) also provides that where a petition to deny is filed it must contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest. Where the Commission finds that such a showing has not been made, it may deny the petition. Accordingly, based upon our review of Great Trails' renewal applications and all the pleadings filed in this proceeding, we find that the Columbus Broadcasting Coalition has failed to raise a

substantial and material question of fact which establishes a *prima facie* case for denial of WCOL–AM–FM's licenses. We also find that a grant of Great Trial's license renewal applications for WCOL and WCOL–FM would serve the public interest, convenience and necessity.

18. In reaching our conclusions, we are not unaware of the concern being expressed by the Columbus Broadcasting Coalition and other minority groups about the responsiveness of the broadcast media to their problems. Hence, we note with concern the fact that petitioners herein have filed petitions to deny the license renewal applications of a number of stations located in Columbus, Ohio. We also note with concern that similar petitions have been filed against many other stations in cities other than Columbus. The Commission, of course, cannot waive or ignore the pleading standards set forth in Section 309(d) to accommodate petitioners. Clearly, if members of the public choose to wait until the end of a license term and then petition to deny renewal of license, they must meet the strict requirements of Section 309(d). This does not mean however that members of the public are left without the means to improve local broadcast service. We have found that cooperation at the local level is the best and most effective method of resolving local problems and improving local service. Accordingly, we wish to reaffirm our prior expression of policy approving community-broadcaster discussions throughout the license term. Obviously, while under an obligation to ascertain and program for community problems, no broadcaster can be aware of everyone's needs all the time. Therefore, interested citizens who feel a station's performance is inadequate should so advise the broadcaster to provide him the opportunity to consider their ideas and suggestions. Such discussions will, of course, be more effective if conducted throughout the license term and not only at renewal time. Such was not the case herein.

19. In view of the foregoing, IT IS ORDERED, That the petition to deny filed by the Columbus Broadcasting Coalition IS DENIED.

20. IT IS FURTHERED ORDERED, That the above-captioned license renewal applications for Stations WCOL and WCOL–FM, Columbus, Ohio, filed by Great Trails Broadcasting Corporation, ARE HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

A number of concerned citizens—individually and as agents of various community organizations in Columbus, Ohio—brought a petition to deny the license renewals of stations WCOL (AM & FM). The Black Broadcasting Coalition (BBC) brought a petition to deny the license renewals of stations WBBW (AM & FM) in Youngstown, Ohio. Both petitions charge that the challenged stations have failed adequately to ascertain their community's needs and that they have discriminated against various minority groups in both their programming and employment practices.

If true, these claims would surely indicate that these stations have failed to serve the public interest. *See, e.g., Primer on Ascertainment*

of Community Problems by Broadcast Applicants, 27 FCC 2d 650 (1971); *Radio Station WSNT, Inc.*, 27 FCC 2d 993 (1971); *Nondiscrimination Employment Practices of Broadcast Licensees*, 13 FCC 2d 766 (1968), 18 FCC 2d 240 (1969), 23 FCC 2d 430 (1970). However, by holding that the pleadings of these petitioners have failed to raise "substantial or material questions of fact" sufficient to show that a grant of these renewals would be *prima facie* inconsistent with the public interest, the majority—with a casual wave of its collective hand—simply brushes these objections aside and grants the renewals.

Under the majority's Draconian approach to our vague, yet stringent pleading rules, these petitioners never really had a chance. I dissent.

In *Stone* v. *Federal Communications Commission*, —— F. 2d —— (D.C. Cir. 1972), 24 RR 2d 2105 (1972), the D.C. Circuit held that, under § 309(d)(1) of the Communications Act of 1934, a petition to deny a licensee's renewal application does not mandate an evidentiary hearing unless that petition contains specific allegations of fact sufficient to show that a grant of the application would be *prima facie* in consistent with the public interest. Like the FCC, the Court merely parroted the language of the Act—failing to elucidate on the sort of allegations required.

As a result, the majority today—as it has done repeatedly in the past—leaves in total darkness those citizens who are concerned enough about the state of broadcasting in their communities to challege a station's renewal application. These selfless citizens just keep filing their renewal challenges, and the majority—after some perfunctory analysis—just keeps telling them that their pleadings have failed to meet the requisite specificity.

Absent a clearer definition of precisely what that specificity "test" demands, I would think that—if we are truly interested in ensuring that our licensees are "serving the public interest" (a phrase upon which the majority has also consistently declined to elaborate)—we would at least give these challengers an opportunity to amend their complaints. *See* my dissent in *Letter to George Corey*, ——— FCC 2d ——— (1972). Absent such procedural flexibility, we are confronted with a pure adversary proceeding where the licensee's lawyers are pitted against the challengers—challengers who do not seek either control or ownership of the station, but whose sole desire is that the broadcaster better serve its community's needs. In such a system, the licensee will invariably win; but the public interest can only lose.

In such circumstances, I should think that this Commission—whose goals are, at least in theory, rather congruent with those of these and other challengers—could do better to help serve the public interest by making a greater effort to determine the truth.

For example, the BBC argues that, in ascertaining its community's needs, the Mahoning Valley Broadcasting Corporation, WBBW's licensee, failed to consult with any members of the community's Spanish-speaking minority—a minority which, according to the BBC, constitutes 8% of the population. This allegation is nowhere denied by the licensee. Yet, the majority finds no problems with the licensee's ascertainment study. Must the pleadings be more specific, or is the majority actually holding that a licensee need not consult with its community's minorities in ascertaining community needs? Surely,

the majority cannot be reaching the latter conclusion. So, why doesn't it at least offer the petitioner some indication of the information it seeks?

In the case of WCOL, the petitioners charge the licensee with discriminatory hiring practices, something which our regulations specifically prohibit. See *Nondiscrimination Employment Practices of Broadcast Licensee*, *supra*, and a problem we have sought recently to correct—though in a rather chaotic, half-hearted manner. See my separate statement in the *Pennsylvania-Delaware Renewals*, ——— FCC 2d ——— (1972), and the subsequent *Pennsylvania-Delaware Equal Employment Opportunity Inquiries*, ——— FCC 2d ——— (1972), and also in the *Washington, D.C., Maryland, Virginia, West Virginia Letters of Inquiry*, released this day.

The majority notes that the licensee's staff is 8% black and that this figure is "reasonable" given the fact that the community is 11.6% black. Aside from this totally ad hoc, unsupported declaration, the majority does not even pause to inquire as to the positions held by these minority members, nor does the majority ask whether this 8% figure represents a reduction in the number of black employees at the stations between 1971 and 1972.

In *Pennsylvania-Delaware Renewals*, *supra.*, the FCC agreed that a reduction in black employment during the last two years should arouse our suspicion and should thus warrant further investigation into a licensee's hiring practices. Had the majority so inquired of Great Trails—an inquiry which demands no more than a glance at the licensee's Annual Employment Report, Form 395—the majority would have discovered that while the station employed eight blacks in 1971—in both full and part time positions—the station employed only seven in 1972.

Since the majority is obviously not going to investigate on its own, it should, at the very least, give the petitioners an opportunity to amplify their complaint.

Indeed, the majority has no problems permitting a licensee—who should not need such favored treatment—the right to amplify and to update its filings. In response to petitioners' claim that Great Trails' efforts at ascertaining its community's needs for the coming years were inadequate, the majority suggests that Great Trails could amend its renewal applications pursuant to § 1.522(a) of the rules, 47 CFR § 1.522(a), by conducting a further ascertainment of community problems.

In *Stone* v. *Federal Communications Commission*, *supra*, the Court held that a licensee could, under § 1.522(a), amend its ascertainment study prior to Commission scrutiny in a renewal proceeding. However, the renewal applicant in that case had sought to amend its ascertainment study on its own motion, well before final Commission action on both the application and an opposing petition to deny. The Court held only that new ascertainment efforts, at that stage of the proceedings, did not violate our policy against upgrading, on the theory that ascertainment is prospective in nature.

There is some question—at least in my mind—about whether the *Stone* court would reach the same result where a licensee does not, on its own, find any difficulties with its ascertainment survey, but,

rather, submits that study to the Commission and rests. In short, I am not convinced that just because an applicant is able to amend its ascertainment study *prior to* a Commission decision upon the merits of that survey, an applicant may amend its survey *after* the Commission has ruled it inadequate. For, in the latter case, the licensee's stubborn refusal to consult properly with its community of service should, I would think, merit *some* form of disapprobation.

But, assuming that the majority is correct in its reading of *Stone*, I cannot see why that majority distinguishes so invidiously between a licensee's right to amend its ascertainment study and, hence, its renewal application, and the right of a concerned citizen's group to amplify its pleadings. This sort of unequal treatment reveals, better than I could ever hope to accomplish, the majority's preference for our licensees at the public's expense.

If we are truly concerned about the failure of these petitioners to offer us the required specificity, then we ought to so advise them and then give them at least one opportunity to try again. To do otherwise, especially while, at the same time, giving our licensees a second bite of the ascertainment apple, is not merely inequitable, and not merely contrary to the public interest which we are directed by Congress to protect—it is simply outrageous.

I dissent.

Statement of Commissioner Benjamin L. Hooks, Concurring in Part; Dissenting in Part

In Re: Renewal Proceedings in Youngstown and Columbus, Ohio.

I concur with the majority on these cases insofar as its holding that the petitions to deny filed by the respective community groups do not attain—or candidly, even proximately attain—the procedural standard of specificity mandated by the Communications Act.[1] It is a hackneyed, but nonetheless true, legal bromide that bad cases make bad law. Vague invective and wide-brush critique in a legal pleading requiring factual precision provides the (justifiably) ideal juridical basis for dismissal. Interested parties must dig deep, make the effort to pinpoint and factually support the exact abuses of which they complain so as to render summary rejection, with attendant loss of credibility, illegal if not impossible.

My point of departure and dissent from my colleagues stems from the fact that the perceived deficiencies in the petitioners' pleadings eliminates only inadequate petitioners from the renewal byplay—it in no way eliminates the Commission itself. As the principal monitors of broadcaster performance, we have the main statutory duty to investigate licensee activities; especially when confronted with earnest complaints from the neighbors. The Commission frequently acts on

[1] Specifically, 47 U.S.C. § 309(d)(1). It must be conceded that Congress intended a strict standard when amending the statute to permit petitions to deny. Congress expected:

> ". . . a substantially stronger showing of a greater probative value than is necessary now in the case of a post grant protest. The allegations of ultimate, conclusionary facts or mere general affidavits . . . are not sufficient." S. Report No. 690, 86th Cong., 1st Session, p. 3 (1959).

See *Stone* v. *F.C.C.*, Case No. 71-1166 (D.C. Cir. June 30, 1972). But see, *Marine Space Enclosures, Inc.* v. *FMC*, 137 U.S. App. D.C. 9, 18 (Note 22) (1969) where the court observed that "[P]rocedural requirements depend in part on the importance of the issues before the agency."

its own volition in withholding renewals when it suspects delinquencies. It should not stand behind a procedural barrier on the apparent side of a licensee and let the matter ride simply because a complainant is without the assiduity, resources or legal acumen to mount a perfect attack.[2] Rather, the Commission should be on all sides looking critically in; not at the quality of the complainants' performance—we do not license complainants—but at the activities of the station.[3]

Accordingly, while I don't believe the Commission's action here is wholly unwarranted, it certainly could have gone further in fulfilling its own statutory function in these cases.

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[2] That the Commission need not depend solely on the procedural sufficiency of denial petitions in determining the propriety of license renewal is clearly enunciated in 47 U.S.C. § 307. In pertinent parts, that Section provides that the Commission "may officially notice" (§ 307(d)(2)) facts and circumstances and if the Commission is "for any reason unable to make the [public interest, convenience and necessity] finding specified . . . it shall formally designate the application for hearing on the ground or reason then obtaining". It is axiomatic that before the Commission can find "any reason" it must first look.

[3] For an astringent reminder of the Commission's appropriate role in these renewal triangles, see Judge Burger's opinion in *Office of Communications of the United Church of Christ* v. *F.C.C.*, 138 U.S. App. D.C. 11, 425 F. 2d 543 (1969).

109-025—73——4

F.C.C. 73–50

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re LIBERTY COMMUNICATIONS, INC., BESSEMER, ALA. For Certificate of Compliance	CAC–605 ALO83

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. On June 9, 1972, Liberty Communications, Inc., filed an application (CAC–605) for certificate of compliance for a new cable television system at Bessemer, Alabama. Bessemer, a community of 33,231 persons is located within a major market, Birmingham, Alabama (#40). Liberty proposes to carry the following television broadcast signals WAPI–TV (NBC), WBMG (CBS), WBRC–TV (ABC), WBIQ (Educ.), all Birmingham, Alabama; WCFT (CBS), Tuscaloosa, Alabama; WTCG–TV (Ind.), Atlanta, Georgia, KPLR–TV (Ind.), St. Louis, Missouri; and WRIP–TV (Ind.), Chattanooga, Tennessee. Liberty's application is opposed by Taft Broadcasting Company, licensee of Station WBRC–TV, Birmingham, Alabama.

2. Taft argues that Liberty's franchise does not comply with the requirements of Section 76.31 of the Commission's Rules; specifically: that the franchise is for a duration of twenty, rather than fifteen years; that there is no provision for significant construction to be accomplished within one year after receipt of Commission certification; that there is no provision for extension of energized trunk cable to a substantial percentage of the franchise area each subsequent year; that there is no provision for service complaints; and that there is no provision for maintenance of a local business office in Bessemer.

3. In response to Taft's objection, Liberty amended its application as follows: it states that its franchise was granted January 25, 1972, and substantially complies with Section 76.31 of the Rules; it commits itself to accomplish significant construction within one year of receiving Commission certification and thereafter to equitably and reasonably extend energized trunk cable to a substantial percentage of its franchise area each year; it submits regulations specifying procedures for investigation and resolution of all service complaints which will be submitted for the approval the City of Bessemer; and it states that it presently maintains a business office in Jefferson County, Alabama, within 15 minutes ride of Bessemer, and expects to have one or more agents who reside in or near Bessemer. We find there is substantial compliance sufficient to permit grant of the application until March 31,

1977, *CATV of Rockford, Inc.*, FCC 72–1005, ——— FCC 2d ———; *LVO Cable of Shreveport-Bossier City*, FCC 72–954, ——— FCC 2d ———.

In view of the foregoing, the Commission finds that grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Application for Certificate of Compliance" filed by Taft Broadcasting Company, on July 28, 1972, directed against CAC–605, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application (CAC–605) for certificate of compliance IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-1001

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of MAHONING VALLEY BROADCASTING CORP. For Renewal of Licenses for STATION WBBW, YOUNGSTOWN, OHIO	File No. BR-2247
and STATION WBBW-FM*, YOUNGSTOWN, OHIO	File No. BRH-935

MEMORANDUM OPINION AND ORDER

(Adopted November 8, 1972; Released November 15, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT; COMMISSIONER HOOKS CONCURRING IN PART AND DISSENTING IN PART AND ISSUING A STATEMENT.

1. The Commission has before it for consideration: (1) the above-captioned license renewal application filed on July 6, 1970, by Mahoning Valley Broadcasting Corporation (WBBW); (2) a petition to deny each of the above-captioned applications, filed October 1, 1970, by the Black Broadcasting Coalition and others (hereinafter BBC);[1] (3) WBBW's opposition to the petitions to deny, filed October 14, 1970; and, (4) BBC's reply filed November 4, 1970.[2]

2. WBBW raises a question concerning the standing of the petitioners in this case. The BBC is an "umbrella" organization whose members include various community organizations in the Youngstown area. We believe the standing of the BBC is clear. *Office of Communications of the United Church of Christ, et al.* v. *F.C.C.*, 123 App. D.C. 328, 359 F. 2d 944 (1966).

ASCERTAINMENT

3. BBC criticizes WBBW's ascertainment of community problems on several grounds. It is alleged that a single ascertainment study was conducted for both WBBW and WBBW-FM. BBC also alleges that WBBW failed "to include any description of the stations' service area or the major groups and interests of which it is comprised," and that "no information is provided concerning the sampling technique employed or the selection of the leadership or general public samples." Further, according to BBC, the 46 interviews with community leaders and 42 interviews with members of the general public are numerically

[1] On August 27, 1970, the Commission granted BBC a 30-day extension of time in which to file petitions to deny WBBW's renewal applications.

[2] On October 29, 1970, BBC's request for a more than one month extension of time in which to file its reply was denied. However, the filing date was extended until November 4, 1970.

*Subsequent to the filing of pleadings in this proceeding, the call letters of WBBW-FM have been changed to WQOD(FM), effective May 1, 1972.

insufficient. Although BBC acknowledges that WBBW ". . . made a special effort to consult with representatives of the Black community . . .", it is alleged that ". . . the station's overall lack of concern for minority groups remains, as indicated by its total failure to consult with members of other minority groups, such as the Spanish speaking community." BBC also alleges that WBBW has not provided a detailed discussion of community needs and interests, nor has there been an attempt to differentiate between the problems of minority and majority communities. BBC charges that WBBW's inclusion of a listing of Black interest items carried on "Open Mike" shows indicates the station's "superficial preoccupation with the Black community". Finally, BBC states that WBBW's "nebulous description of a contemporary music format . . . provides little or no insight into the station's understanding of the Youngstown Community."

4. In opposition, WBBW first states that BBC was incorrect in stating that WBBW had conducted a single ascertainment survey. On the contrary, licensee submits that it is continuously ascertaining the area's problems ". . . through its Community Service Director, Mr. Mizell 'Chick' Stewart, Sr., by its continuing contacts with prominent community leaders and groups as they utilize the public service facilities of the Station, by its public affairs programs and news programs, by written contacts urging the use of the Station's facilities, and by continuing contact with the leaders of the various educational, governmental and civic organizations." WBBW also states that it conducted 104 interviews with members of the general public. In this connection, WBBW points out that the 42 individuals listed in its renewal exhibit were clearly identified as "A representative list of area residents with whom dialogued surveys were conducted." This is all that is required, according to licensee, since the Commission does not require an applicant to submit a list of all contacts made. In opposition to BBC's allegation that the station's ascertainment showing contained no description of the station's service area or the groups and interests of which it is comprised, WBBW points to its list of civic organizations, interests and groups consulted in the survey. Licensee also includes as an exhibit in its opposition several tables of population statistics. Regarding the allegation that it has shown lack of concern for minority groups, WBBW contends that it consulted with a cross section of the community and that the national origin of persons contacted was not requested. The licensee also states, contrary to BBC's allegation, that its renewal application does provide a detailed discussion of community problems. In this connection, WBBW points to Exhibits 3, 4, and 5, of its renewal applications, which list the various individuals, groups, and organizations in the community which were consulted, the problems ascertained, and some of the types of programs proposed.

5. In defending its inclusion of the list of 28 programs on "Open Mike" which were of interest to the Black community, WBBW states that they were ". . . merely representative programs where the guests were all Black." Further, WBBW states that it has used the "Open Mike" show to meet many of the current needs and interests of the total community, including the Black community. Some of the topics included were problems of the city, drugs, city transportation, war in

Vietnam, city health problems, community sewer tax issues, mental health, welfare, parks and recreation, and many others. In addition, licensee states that "To Be Equal", a local weekly program series produced in cooperation with the local Urban League, is specifically designed for the Black community. This program began in March 1970 and is aired each Saturday at 6:15 p.m. on WBBW–AM and FM. The licensee also states that it carries a series entitled "Did You Know", which is dedicated to highlighting Black history. This series, according to licensee, appears 30 times each week on both WBBW–AM and FM. Another program which WBBW states is meeting community needs is "Job Call", a weekly 15-minute program presenting job availabilities within the Youngstown market. "Opportunity Line" and "Life Line" are two other shows which, WBBW contends, serve the needs of the Youngstown area. Finally, in opposition to BBC's allegation that its application contained a "one-page nebulous description of a contemporary music format", WBBW alleges that no such description exists in its application since it does not have a contemporary music format.

6. In reply, BBC states that it has alleged not a total lack of consultation with the Black community, but an inadequate consultation and responsiveness and an overall insensitivity to the problems and needs of the Black community. BBC also challenges several of the consultations listed in WBBW's application by submitting statements of the directors of three organizations who state that the individuals consulted by WBBW were not authorized to represent their respective organizations. BBC also includes the statements of two other individuals who were consulted by WBBW. These individuals state, in essence, that the interviews were ineffectual. Petitioner states that its conclusion that WBBW conducted a single ascertainment study for WBBW–AM and WBBW–FM was based on the fact that the two renewal applications contained "identical" supporting documents, and by the fact that the licensee submitted a single opposition and motion to dismiss for both stations. The licensee's ascertainment, according to BBC, does not meet the standards of the Commission's 1968 Public Notice on *Ascertainment of Community Needs by Broadcast Applicants*, 13 RR 2d 1903.[3] BBC next alleges, in its reply, that WBBW's Community Service Director, Mr. Mizell Stewart, was hired without BBC's being consulted regarding his qualifications. Mr. Stewart, it is alleged, is unqualified for the position since he works fulltime for the Youngstown Police Department. It is further alleged by BBC that Mr. Stewart is an older man who is not attuned to the attitudes of younger people in the community. Regarding WBBW's claim that it actually contacted at least 104 members of the general public, BBC acknowledges that the applicant is not required to submit supporting data. However, petitioner asserts, "Certainly, when a Petition to Deny has been filed, the licensee ought to find it in his best interest to indicate exactly what ascertainment efforts were taken." It is next alleged in BBC's reply that only 18 of the 42 residents were from the Youngstown area and only two of that number were Black. Petitioner submits statements from these two individuals which state

[3] These requirements were subsequently set out in the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971).

that they were not personally consulted by WBBW. BBC also asserts that WBBW has ignored the Spanish-speaking population of Youngstown. In this connection, it is alleged that this group includes 8 percent of the population of Youngstown, that it is a substantial as well as cohesive segment of the population, and that its members are readily identifiable by surname.

7. In its reply, BBC further contends that WBBW's use of call-in programs is "a cheap and easy format." Petitioner also charges that WBBW failed to submit any evidence in support of its claim that it carried more than 28 programs of service to the Black community. Regarding WBBW's establishment of the program "To Be Equal", BBC alleges that it is merely "a token gesture", although "[i]t is a start in the right direction . . ." BBC also contends that the institution of the vignettes "Did You Know" was a good start, but it is no way representative of WBBW's past or proposed programming and can barely begin to compensate for its past and proposed inadequacies. In this connection, BBC alleges that the licensee's other programs, "Job Call", "Opportunity Line", and "Life Line", are designed for the community as a whole and not for the Black community in particular. Petitioner contends that WBBW does not distinguish between its AM and FM facilities, yet such treatment is somewhat misleading. Thus, BBC notes that "WBBW-FM is increasingly a 'background music' station and WBBW-AM is wedded to a call-in format for public affairs programming."

PROPOSED PROGRAMMING

8. With respect to WBBW-AM's proposed programming, BBC first alleges that the station proposes to reduce the time devoted to programs in the categories of news, public affairs, and "other". Thus, BBC states that news will be reduced from 11.1% to 10.4%; public affairs will be reduced from 9.4% to 6.7%; and "other" programming will be reduced from 7.9% to 3.7%. Petitioner next alleges that the WBBW-AM application lists three weekly programs related to Blacks which it intends to continue in the next license period. BBC claims that all three of those programs, "Job Call", "To Be Equal", and "Bethel Church of God in Christ", were begun within the past six months as a result of its efforts. It is alleged further that "[t]hese minimal station gestures are neither sufficiently responsive to the needs and interests of the Black community to be acceptable nor are they in any way indicative of WBBW's programming record over the past license period." Petitioner contends that WBBW's call-in shows, which it describes as the chief means of discussing public issues, are not sufficient to resolve public questions. With respect to WBBW-FM's proposed programming, BBC alleges that 85% of the time will be devoted to recorded music, while only 5.3% will be devoted to news, 0.8% to public affairs, and 1.9% to "other" programming. Since petitioner presumes that most of WBBW-FM's nonentertainment programing will be duplicated from WBBW-AM, it is alleged that ". . . the station . . . will not add to the community's diversity of informational, instructional or religious programs."

9. In opposition, the licensee maintains that its proposed reductions in the program categories of News, Public Affairs, and All Other programming, Exclusive of Entertainment and Sports, are insignificant. The licensee also states that the amount of programming proposed in these categories is sufficient to meet the problems in the Youngstown area. The licensee states further that, although it has proposed reductions in the amount of broadcast time it proposes to devote to these programming categories, WBBW is nevertheless broadcasting the same amount of News, Public Affairs, and All Other programming presently being broadcast. It is the licensee's position that its AM renewal Exhibit 5, which lists 33 programs or program series to be broadcast, meets the needs and interests of the area. In this connection, WBBW characterizes its 12 hours of public affairs programs a week on its AM facility as exemplary in comparison with the average radio station. WBBW alleges that BBC erred in its conclusion that the three programs for the Black community were initiated by the station as a result of the efforts of the petitioner. Rather, the license contends, all three programs were begun prior to any dialogue with the petitioner: "Job Call" on May 18, 1968; "To Be Equal" on March 21, 1970; and "Bethel Church of God in Christ" on July 21, 1963. Finally, WBBW disagrees with petitioner's conclusion that its audience participation programs, "Open Mike" and "Life Line," do not contribute to the resolution of public questions in the Black community or within the Youngstown community as a whole. Such a conclusion, according to WBBW, ". . . is self-serving and contrary to the Commission's pronouncements that these types of public affairs programs are wanted and needed to fulfill the public's desire to discuss current problems of any area."

10. Petitioner, in reply, contends that the licensee has given no indication of the nature of its contemplated format change or its effect on the station's service to the community. BBC also alleges that call-in shows are informal, unstructured, often lightweight and not exemplary programming.

PAST PROGRAMMING

11. With respect to WBBW's past programming, BBC alleges that licensee's list of past programs which it intends to continue in the future greatly exceeds its list of typical and illustrative programs presented during the past year. The only program which offered any potential for local participation by minority groups, according to BBC, was "Open Mike". Petitioner further alleges that no regular series are listed in the areas of public affairs, instructional or religious which relate specifically to Blacks or other minorities.

12. WBBW, in opposition, submits that BBC's allegations regarding its past programs are in error and not factual. WBBW states that Exhibit 5 is a list of typical programs and program series which the station presently broadcasts and plans to continue while Exhibit 7 is a partial listing of programs carried. The following programs listed in Exhibit 5, licensee asserts, specifically relate to all minorities in the Youngstown area: "Open Mike", "Education News Special", "Consumer Time", "Watch Your Step", "Your Social Security", "The Veteran's Show", "Concert Preview", "Northwestern Reviewing

Stand", "Valley Tales", "Job Call", "Georgetown Forum", "Life Line", "To Be Equal", "Party Line", Business Review", "Mt. Calvary Pentecostal Church" and "Bethel Church of God in Christ".

13. In reply, BBC states that WBBW has failed to demonstrate the alleged error in petitioner's analysis of its past programming. Petitioner further states that the licensee has not supplemented its "partial listing" in Exhibit 7. Finally, BBC characterizes as absurd WBBW's statement that all of the public affairs, instructional and religious programs listed in Exhibit 5 specifically relate to minorities in the Youngstown area. In this connection BBC questions, *inter alia*, whether "Bethel Church of God in Christ" relates to the minority Jewish or Lebanese communities, or whether "The Veteran's Show" relates to the female minority.

COMMERICAL PRACTICES

14. BBC next alleges that the station exceeded the 18 minute per hour commercial limit set by the NAB Code on two occasions in the composite week. Licensee states that it exceeded its policy of limiting commercial matter to 18 minutes on two occasions. In one hour it exceeded its limit by 30 seconds and in the other hour by 20 seconds. It is licensee's contention that these two instances do not violate the station's policy or the Commission's.

PUBLIC FILE

15. Petitioner alleges that on September 29, 1970, Mrs. Margaret Linton visited WBBW's studios to inspect the station's policy relating to minorities. However, according to Mrs. Linton's statement, the station personnel were unable to produce the document. Petitioner alleges that this is a clear violation of Section 1.580 of the Commission's rules.[4] The licensee denies violation of the Commission's rule. It contends that Mrs. Linton requested the public file from a female staff member whose responsibility does not include knowledge of the location of the public file. All other staff members were out to lunch, according to licensee. WBBW further contends that if Mrs. Linton had returned after lunch the public file would have been made available to her as it had been on another occasion. In reply, BBC contends that the Commission's rule requiring the availability of a public file does not contain an exclusion for lunch hour.

NEGOTIATIONS

16. BBC contends that WBBW has been totally inconsiderate in responding to its efforts to make broadcasting relevant to the needs of Black people and other minorities. In particular, BBC alleges that it submitted three specific proposals to the station and on each occasion the licensee's response showed no genuine interest in seeking solutions to the many community problems. The licensee, in opposition, states that it has responded to each proposal presented to it by BBC and that it will continue its dialogue with petitioner and other representa-

[4] Petitioner erroneously cites Section 1.580. The rule involved is Section 1.526.

tives of the community. Further, WBBW submits that it does have a genuine interest in seeking solutions to the apparent problems of the Black community.

EMPLOYMENT

17. Finally, BBC alleges that WBBW employs only four Blacks out of a total of 32 persons. Of these four, one is a fulltime custodian, one a part-time community service director and one a part-time clerk-typist. It is alleged that this record of employment is not in accord with the Commission's rules concerning equal employment opportunities. BBC further alleges that it does not appear that WBBW has any affirmative plans to conform with the Commission's rules. The licensee disagrees with petitioner's conclusion and asserts that it is an equal employment opportunity employer. To demonstrate its compliance with the federal and local laws governing employment, WBBW submits a copy of the station's employment application. BBC states in reply that submission of this application is merely an empty gesture if the station continues to employ only token Blacks in non-policy making positions.

CONCLUSIONS

18. Petitioner has alleged that the licensee's past programming has not been in the public interest. As we stated in the *1960 Network Programming Inquiry, 25 F.R. 7291:*

> **. . . the principal ingredient of the licensee's obligation to operate his station in the public interest is the diligent, positive, and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his community or service area, for broadcast service.**

The Commission has never imposed upon licensees any requirement that they broadcast certain types of programs in order to fulfill their public interest obligation. Programming is generally a matter left to the discretion of the individual licensee. It is not the Commission's function to sit as a final arbiter to evaluate the propriety of a licensee's programming decisions. Rather, it is our duty to determine whether or not the licensee has made a reasonable effort to deal with the problems of his service area.

19. The renewal application for WBBW–AM indicates that during the composite week the station broadcast 14 hours and 57 minutes of news (11.1% of total time on the air), of which the licensee estimates that 33% of this time is regularly devoted to local and regional news. WBBW–AM also broadcast 12 hours and 43 minutes (9.4% of total broadcast time) in the category of public affairs, and 10 hours and 36 minutes (7.9% of total broadcast time) in the category of all other programming, exclusive of entertainment and sports. In addition, the station also broadcast 211 public service announcements.

20. One of the major programs relied upon by licensee to fulfill its public service obligation is "Open Mike". During the past license period "Open Mike" has served as a forum for a diverse range of community organizations and groups. Broadcast each weekday morning for two hours, "Open Mike", through a varied format of group discussions, interviews, and call-in participation by listeners, has covered such topics as sewer taxes, drugs, civil defense, city health, water serv-

ice, summer jobs for youth, Vietnam, and transportation. "Open Mike" has also featured interviews and discussions with leaders of the Youngstown Black community. These leaders have discussed such issues as the welfare family, rehabilitating homes for the inner city and civil rights. Other programs which were broadcast to meet community needs include: "To Be Equal", a 15-minute program broadcast each Saturday and produced in cooperation with the Urban League; "Did You Know", 40 to 90-second vignettes about Black history broadcast 30 times each week; "Job Call", a 15-minute program broadcast each Saturday presenting local job opportunities; "Life Line", a call-in show produced in cooperation with the Youngstown Council of Churches; and "Education News Special", broadcast weekdays and produced by the Ohio Education Association.

21. On the basis of the information submitted in licensee's renewal application and its opposition pleading, summarized above, we conclude that WBBW-AM's past programming has been in the public interest. Petitioner's arguments concerning WBBW's past service is merely conclusory. BBC's statement that "No regular series are listed in the areas of public affairs, instructional or religious which relate specifically to Black or other minorities", misconstrues the Commission's requirement that a station serve the needs and interests of its community. Where it appears that a station has followed a discriminatory policy in its over-all programming by failing to serve a substantial minority in the community, a substantial and material question of fact is raised concerning the licensee's service in the public interest. *Radio Station WSNT, Inc.*, 27 FCC 2d 993 (1971). Here, however, there is no such evidence of discriminatory programming; nor is there any evidence that non-Blacks have been accorded different, more positive treatment. *Stone* v. *F.C.C.*, D.C. Cir. Case No. 71-1166 (June 30, 1972). A licensee has wide discretion in deciding the best manner in which to effectively respond to community problems. Therefore, a program series which discusses numerous community problems, including those of interest to the Black community, should not be dismissed for failure to serve the Black community merely because it is not directed specifically to Blacks. *Capitol Broadcasting Co.*, 28 FCC 1135 (1965). *The Evening Star Broadcasting Company*, 27 FCC 2d 316 (1971), affirmed *sub nom. Stone* v. *F.C.C.*, *supra*.

22. BBC does not make any specific allegations regarding WBBW-FM's past performance. Instead, BBC merely states that the station proposes to continue its good music format. The BBC alleges that this proposal is insufficient to meet the needs and interests of the Youngstown community. This allegation, without more, is too general in nature to require exploration in an evidentiary hearing. Further, most radio stations follow a specialized format; e.g., top-40, soul, all-news, classical, country-western, etc. However, the ultimate test of public service responsibility is not the particular entertainment format utilized but, rather, whether the station is providing informational programming—news, public affairs, and all other programming, exclusive of entertainment and sports— to serve the needs and interests of the public it is licensed to serve. Such programming may, of course, be tailored to the particular format of the station. See *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC

2d 650 (1971). In the present case, WBBW-FM broadcast "good music in stereo" 85 per cent of its total air time. Also, as disclosed by its composite week figures, WBBW-FM broadcast 5 per cent news, 0.7 per cent public affairs, and 2.9 per cent all other programming, exclusive of entertainment and sports. Additionally, the station broadcast 128 public service announcements. There is no information before us which indicates that this programming has failed to serve the needs and interests of the Youngstown community; and, accordingly, it is concluded that WBBW-FM's past programming service has been in the public interest.

23. Petitioner alleges that the licensee's ascertainment of community problems is deficient. Our review of WBBW's ascertainment efforts, however, leads us to conclude that those efforts are in compliance with our requirements. The showing required of an applicant in response to Part I, Section IV-A of the renewal application (Ascertainment) is set forth in the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*, *supra*. A broadcast applicant is required to conduct personal consultations with community leaders representing a cross-section of the community and to survey the general public in order to determine the problems, needs and interests of the community. After ascertaining community problems, the applicant must then evaluate them to determine their relative importance so that he may propose programming reasonably designed to meet those problems, needs and interests. The number of persons consulted is not the most important factor in judging whether a licensee has conducted a good survey, because the number of such consultations often depends on the size of the station's staff. *Universal Communications Corp.*, 27 FCC 2d 1022 (1971). Rather, what is required is that the licensee make reasonable and good faith efforts to consult with a representative cross-section of the community.

24. WBBW's renewal applications indicate that consultations were conducted with 46 community leaders representing a wide cross-section of community interests. Included among those interviewed were representatives of the following organizations: NAACP, Neighborhood Youth Corps, Chamber of Commerce, Civil Defense Office, County Sheriff, Planned Parenthood Association, Alcoholic Clinic, United Appeal, and others. The licensee also contacted at least 42 members of the general public. Although petitioner has alleged that WBBW's survey ignored minority groups other than Blacks, it has submitted no factual data to support its claim. The one affidavit and five statements appended to BBC's reply do not detract from the validity of WBBW's consultations. These statements allege either that the individuals interviewed were confused as to the purpose of the interview or that they were not asked their opinions about WBBW's operation. In this connection, we emphasize that the purpose of these consultations is to ascertain community problems. Thus, questions pertaining to the station's programming policies or employment practices are not directly relevant to the purpose of the consultations. See *Primer* Question and Answer 18, 27 FCC 2d at 684, 685. Moreover, there is no requirement that an applicant must consult with the head of an organization. To be a community leader, one does not have to hold a position such as director, president, or chairman. We also note that

there is no requirement that a licensee conduct a separate ascertainment for each of its stations in the same city. Such a requirement would amount to an unnecessary duplication of effort, a result which we have attempted to avoid. See *Primer*, *supra*, paragraph 15.

25. As a result of its consultations with community leaders and members of the general public, WBBW compiled a list of 25 problems including, among others, the following: problems and dangers of pollution; the need for higher quality education and better schools; more adequate law enforcement; stronger controls for the drug and narcotics problems; more effective methods for the prevention of crime; more adequate and reasonably priced housing; better understanding between blacks and whites; a better transportation system; more jobs and employment for youth of the community; and solution for taxation problems. To meet these ascertained needs, WBBW proposes to continue the same programs it broadcast in the past license period as discussed at paragraph 18, *supra*. We believe that a promise to continue to carry such programs as "Open Mike", "To Be Equal", "Did You Know", "Job Call", and "Education News Special" which have dealt with a wide variety of community problems, constitutes a sufficient programming proposal to meet community problems in the new license period. As in the past license period, these program proposals relate only to WBBW-AM. We also conclude for the same reasons set forth in paragraph 22, *supra*, that the proposed service for WBBW-FM is adequate to meet the needs and interests of the community.

26. Petitioner's allegation that WBBW-AM proposes to reduce broadcast matter in the categories of news, public affairs, and "other" fails to raise a substantial and material question of fact which requires exploration in a hearing. The Commission has not adopted quantitative standards by which to judge a licensee's performance in the context of a regular renewal. Instead, the amount of such programming has been left to the sound discretion of the licensee based upon his ascertainment of community problems, the format of his station, the size of his market, the availability of other broadcast outlets in the markets and other factors which may affect the licensee's operation of his station. Absent evidence that the licensee's percentage proposals will not meet ascertained community problems or that the licensee has abused its discretion, the Commission will not seek to second guess the licensee. No such evidence has been presented here. In view of the number of variables involved in the operation of a broadcast station, a licensee's program proposals are not expected to remain static. What is important is that a licensee live up to its programming promises. No question of promise versus performance has been raised in this proceeding. In fact, WBBW-AM's programming during the 1970 composite week in the categories of news, public affairs and "other" exceeded its 1967 proposals. Finally, we note that although WBBW-AM's 1970 percentage proposals are less than its 1967 proposals, the licensee states, in its opposition, that it is presently carrying the same amount of programming in the categories of news, public affairs and "other" as the station carried during the past license period.

27. Petitioner has alleged that the licensee's employment record is not in compliance with the Commission's Equal Employment Oppor-

tunity Rules and that the licensee has no affirmative plans to establish compliance. We note, by way of background, that on June 4, 1969, the Commission adopted rules to prohibit discrimination in the employment practices of broadcast licenses. *Nondiscrimination in Broadcast Employment*, Docket No. 18244, FCC 69-631, 18 FCC 2d 240 (1969). At the same time we issued a *Further Notice of Proposed Rule-Making*, 34 F.R. 9288, requesting comments with regard to a proposed annual reporting requirement and a proposed requirement for the preparation of equal employment opportunity programs to be furnished by existing stations in the applications for construction permits, assignments or transfers of control, and renewals of licenses. By *Report and Order* adopted May 20, 1970, released June 3, 1970, 23 FCC 2d 430, we adopted a rule, 47 C.F.R. 1.612, requiring broadcast permittees and licensees to file an annual statistical report on their employment makeup (FCC Form 395), and a requirement that broadcast applicants and licensees submit an equal employment opportunity program (Section VI of FCC Forms 301, 303, 309, 311, 315, 340, and 342). By *Public Notice* dated October 22, 1970, the Commission advised all broadcast licensees and permittees that they would be required to file their initial annual statistical reports of their employment makeup on or before May 1, 1971. The Commission also advised broadcast applicants and licensees who would be filing applications on or after January 4, 1971, that they would be required to file an equal employment opportunity program in accordance with the guidelines delineated in Section VI of the various broadcast application forms.

28. Petitioner's allegations concerning WBBW's employment policies and practices are based solely upon information and belief. Petitioner cites the number of minority persons employed by WBBW and concludes that the licensee has engaged in employment discrimination on the basis of race. No evidence of specific instances of discrimination indicating a pattern of discrimination has been submitted. Nor has petitioner submitted any evidence indicating that the licensee's employment policies contain artificial barriers to employment. While it is recognized that an extremely low rate of minority employment may raise appropriate questions requiring administrative inquiry, the facts in this proceeding indicate that the licensee is making reasonable and good faith efforts to assure nondiscriminatory employment policies and practices and, in particular, to improve the employment status of minorities. An examination of the stations' annual employment reports (FCC Form 395), which are now on file with the Commission, indicates that the licensee is taking affirmative steps to improve its minority hiring. The May 1971 report indicates that WBBW employed 21 persons full time, including one minority service worker. The stations also employed 11 persons part-time, including two minority professionals and one minority office and clerical worker. The stations' 1972 report indicates that WBBW employed 23 persons full time, including one minority professional, one minority office and clerical worker and one minority service worker. The 1972 report also states that WBBW employed six persons part-time, including two minority professionals. These facts also disclose that the percentage of minorities employed by the licensee (i.e., 13%) fall

within a range of reasonableness when compared with the percentage of minorities (approximately 9 per cent) in the Youngstown-Warren standard metropolitan statistical area.[5] On the basis of the information available to us, we conclude that the licensee is making a reasonable effort to maintain policies and practices which assure nondiscrimination in employment.

29. We find petitioner's allegation concerning licensee's commercial practices to be without merit. Although the licensee did exceed its self-imposed commercial ceiling of 18 minues on two occasions, this does not constitute a pattern of over-commercialization.

30. Petitioner alleges and licensee admits that on one occasion the station's public file was not available for inspection by a representative of petitioner. Licensee's explanation that all the employees who were responsible for the public file were out to lunch is not a satisfactory reason for failure to make the file available. Section 1.526 of the rules provides that a file be available at the main studio of a broadcast station during regular business hours for inspection by the public. It is the licensee's responsibility to make any necessary arrangements to have the public file available at all times during its regular business hours. We note, however, that licensee did make its public file available to petitioner on at least one other occasion and the violation of Section 1.526 does not appear to be repeated. We believe that no further action is necessary on this matter.

31. The pleadings indicate the parties have drawn different inferences and conclusions from the facts presented and, to some degree, have become involved in irreconcilable disputes as to the facts themselves. The existence of factual disputes does not give rise in every instance to the requirement that a hearing be held. This requirement does not arise under Section 309(d) of the Act unless the Commission finds that it involves substantial or material questions of fact which have direct bearing on the determination of whether or not the public interest would be served by a grant of the application. *Stone* v. *F.C.C.*, *supra*. Based on our review of the licensee's renewal applications and the matters discussed herein, we find that BBC has failed to raise substantial and material questions of fact which establish a *prima facie* case for denial of WBBW's licenses. We also find that a grant of Mahoning Valley Broadcasting Corporation's applications would serve the public interest, convenience and necessity.

32. In reaching our conclusions, we are not unaware of the concern being expressed by minority groups about the responsiveness of the broadcast media to their local problems. The Commission, of course, cannot waive or ignore the pleading standards set forth in Section

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[5] Bureau of the Census, Advance Report on Population Characteristics PC (V2)–37, February 1971, discloses the following population characteristics for Youngstown and the Youngstown-Warren Metropolitan Area:

Youngstown, Ohio:	
Total population	139,788
White population	103,765
Negro population	35,285
Other	738
Youngstown-Warren metropolitan area:	
Total population	536,003
White population	483,796
Negro population	50,621
Other	1,586

309(d) of the Act to accommodate petitioners. Clearly, if members of the public choose to wait until the end of a license term and then petition to deny renewal of license, they must meet the strict requirements of Section 309(d). This does not mean however that community groups are left without the means to improve local broadcast service. We have found that cooperation at the local level is the best and most effective method of resolving local problems and improving local service. Accordingly, we wish to reaffirm our prior expression of policy approving community-broadcaster discussions *throughout the license term.* Obviously, while under an obligation to ascertain and program for community problems, no broadcaster can be aware of everyone's needs all the time. Therefore, interested members of the public who feel a station's performance is inadequate should so advise the broadcaster to give him the opportunity to consider their ideas and suggestions. Such discussions will be more effective if conducted throughout the license term and not only at renewal time.

33. Accordingly, IT IS ORDERED, That the petitions to deny filed by the Black Broadcasting Coalition and others are denied.

34. IT IS FURTHER ORDERED, That the above-captioned applications for renewal of licenses of Stations WBBW and WQOD (formerly WBBW-FM), Youngstown, Ohio, are hereby granted.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

A number of concerned citizens—individually and as agents of various community organizations in Columbus, Ohio—brought a petition to deny the license renewals of stations WCOL (AM & FM). The Black Broadcasting Coalition (BBC) brought a petition to deny the license renewals of stations WBBW (AM & FM) in Youngstown, Ohio. Both petitions charge that the challenged stations have failed adequately to ascertain their community's needs and that they have discriminated against various minority groups in both their programming and employment practices.

If true, these claims would surely indicate that these stations have failed to serve the public interest. *See, e.g., Primer on Ascertainment of Community Problems by Broadcast Applicants,* 27 FCC 2d 650 (1971); *Radio Station WSNT, Inc.,* 27 FCC 2d 993 (1971); *Nondiscrimination Employment Practices of Broadcast Licensees,* 13 FCC 2d 766 (1968), 18 FCC 2d 240 (1969), 23 FCC 2d 430 (1970). However, by holding that the pleadings of these petitioners have failed to raise "substantial or material questions of fact" sufficient to show that a grant of these renewals would be *prima facie* inconsistent with the public interest, the majority—with a casual wave of its collective hand—simply brushes these objections aside and grants the renewals.

Under the majority's Draconian approach to our vague, yet stringent pleading rules, these petitioners never really had a chance. I dissent.

In *Stone* v. *Federal Communications Commission,* —— F. 2d —— (D.C. Cir. 1972), 24 RR 2d 2105 (1972), the D.C. Circuit held that,

under § 309(d)(1) of the Communications Act of 1934, a petition to deny a licensee's renewal application does not mandate an evidentiary hearing unless that petition contains specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest. Like the FCC, the Court merely parroted the language of the Act—failing to elucidate on the sort of allegations required.

As a result, the majority today—as it has done repeatedly in the past—leaves in total darkness those citizens who are concerned enough about the state of broadcasting in their communities to challenge a station's renewal application. These selfless citizens just keep filing their renewal challenges, and the majority—after some perfunctory analysis—just keeps telling them that their pleadings have failed to meet the requisite specificity.

Absent a clearer definition of precisely what that specificity "test" demands, I would think that—if we are truly interested in ensuring that our licensees are "serving the public interest" (a phrase upon which the majority has also consistently declined to elaborate)—we would at least give these challengers an opportunity to amend their complaints. *See* my dissent in *Letter to George Corey*, ——— FCC 2d ——— (1972). Absent such procedural flexibility, we are confronted with a pure adversary proceeding where the licensee's lawyers are pitted against the challengers—challengers who do not seek either control or ownership of the station, but whose sole desire is that the broadcaster better serve its community's needs. In such a system, the licensee will invariably win; but the public interest can only lose.

In such circumstances, I should think that this Commission—whose goals are, at least in theory, rather congruent with those of these and other challengers—could do better to help serve the public interest by making a greater effort to determine the truth.

For example, the BBC argues that, in ascertaining its community's needs, the Mahoning Valley Broadcasting Corporation, WBBW's licensee, failed to consult with any members of the community's Spanish-speaking minority—a minority which, according to the BBC, constitutes 8% of the population. This allegation is nowhere denied by the licensee. Yet, the majority finds no problems with the licensee's ascertainment study. Must the pleadings be more specific, or is the majority actually holding that a licensee need not consult with its community's minorities in ascertaining community needs? Surely, the majority cannot be reaching the latter conclusion. So, why doesn't it at least offer the petitioner some indication of the information it seeks?

In the case of WCOL, the petitioners charge the licensee with discriminatory hiring practices, something which our regulations specifically prohibit, See *Nondiscrimination Employment Practices of Broadcast Licensee*, *supra*, and a problem we have sought recently to correct—though in a rather chaotic, half-hearted manner. See my separate statement in the *Pennsylvania-Delaware Renewals*, ——— FCC 2d ——— (1972), and the subsequent *Pennsylvania-Delaware Equal Employment Opportunity Inquiries*, ——— FCC 2d ——— (1972), and also in the *Washington, D.C., Maryland, Virginia, West Virginia Letters of Inquiry*, released this day.

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The majority notes that the licensee's staff is 8% black and that this figure is "reasonable" given the fact that the community is 11.6% black. Aside from this totally ad hoc, unsupported declaration, the majority does not even pause to inquire as to the positions held by these minority members, nor does the majority ask whether this 8% figure represents a reduction in the number of black employees at the stations between 1971 and 1972.

In *Pennsylvania-Delaware Renewals*, *supra*, the FCC agreed that a reduction in black employment during the last two years should arouse our suspicion and should thus warrant further investigation into a licensee's hiring practices. Had the majority so inquired of Great Trails—an inquiry which demands no more than a glance at the licensee's Annual Employment Report, Form 395—the majority would have discovered that while the station employed eight blacks in 1971—in both full and part time positions—the station employed only seven in 1972.

Since the majority is obviously not going to investigate on its own, it should, at the very least, give the petitioners an opportunity to amplify their complaint.

Indeed, the majority has no problems permitting a licensee—who should not need such favored treatment—the right to amplify and to update its filings. In response to petitioners' claim that Great Trails' efforts at ascertaining its community's needs for the coming years were inadequate, the majority suggests that Great Trails could amend its renewal applications pursuant to § 1.522(a) of the rules, 47 CFR § 1.522 (a), by conducting a further ascertainment of community problems.

In *Stone* v. *Federal Communications Commission*, *supra*, the Court held that a licensee could, under § 1.522(a), amend its ascertainment study prior to Commission scrutiny in a renewal proceeding. However, the renewal applicant in that case had sought to amend its ascertainment study on its own motion, well before final Commission action on both the application and an opposing petition to deny. The Court held only that new ascertainment efforts, at that stage of the proceedings, did not violate our policy against upgrading, on the theory that ascertainment is prospective in nature.

There is some question—at least in my mind—about whether the *Stone* court would reach the same result where a licensee does not, on its own, find any difficulties with its ascertainment survey, but, rather, submits that study to the Commission and rests. In short, I am not convinced that just because an applicant is able to amend its ascertainment study *prior to* a Commission decision upon the merits of that survey, an applicant may amend its survey *after* the Commission has ruled it inadequate. For, in the latter case, the licensee's stubborn refusal to consult properly with its community of service should, I would think, merit *some* form of disapprobation.

But, assuming that the majority is correct in its reading of *Stone*, I cannot see why that majority distinguishes so invidiously between a licensee's right to amend its ascertainment study and, hence, its renewal application, and the right of a concerned citizen's group to amplify its pleadings. This sort of unequal treatment reveals, better than I

could ever hope to accomplish, the majority's preference for our licensees at the public's expense.

If we are truly concerned about the failure of these petitioners to offer us the required specificity, then we ought to so advise them and then give them at least one opportunity to try again. To do otherwise, especially while, at the same time, giving our licensees a second bite of the ascertainment apple, is not merely inequitable, and not merely contrary to the public interest which we are directed by Congress to protect—it is simply outrageous.

I dissent.

STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS, CONCURRING IN PART; DISSENTING IN PART

In Re: Renewal Proceedings in Youngstown and Columbus, Ohio

I concur with the majority on these cases insofar as its holding that the petitions to deny filed by the respective community groups do not attain—or candidly, even proximately attain—the procedural standard of specificity mandated by the Communications Act.[1] It is a hackneyed, but nonetheless true, legal bromide that bad cases make bad law. Vague invective and wide-brush critique in a legal pleading requiring factual precision provides the (justifiably) ideal juridical basis for dismissal. Interested parties must dig deep, make the effort to pinpoint and factually support the exact abuses of which they complain so as to render summary rejection, with attendant loss of credibility, illegal if not impossible.

My point of departure and dissent from my colleagues stems from the fact that the perceived deficiencies in the petitioners' pleadings eliminates only inadequate petitioners from the renewal byplay—it in no way eliminates the Commission itself. As the principal monitors of broadcaster performance, we have the main statutory duty to investigate licensee activities; especially when confronted with earnest complaints from the neighbors. The Commission frequently acts on its own volition in withholding renewals when it suspects delinquencies. It should not stand behind a procedural barrier on the apparent side of a licensee and let the matter ride simply because a complainant is without the assiduity, resources or legal acumen to mount a perfect attack.[2] Rather, the Commission should be on all sides looking critically

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[1] Specifically, 47 U.S.C. § 309(d)(1). It must be conceded that Congress intended a strict standard when amending the statute to permit petitions to deny. Congress expected:

> ". . . a substantially stronger showing of a greater probative value than is necessary now in the case of a post grant protest. The allegations of ultimate, conclusionary facts or mere general affidavits . . . are not sufficient." S. Report No. 690, 86th Cong., 1st Session, p. 3 (1959).

See *Stone* v. *F.C.C.*, Case No. 71-1166 (D.C. Cir. June 30, 1972). But see, *Marine Space Enclosures, Inc.* v. *FMC*, 137 U.S. App. D.C. 9, 18 (Note 22) (1969) where the court observed that "[P]rocedural requirements depend in part on the importance of the issues before the agency."

[2] That the Commission need not depend solely on the procedural sufficiency of denial petitions in determining the propriety of license renewal is clearly enunciated in 47 U.S.C. § 307. In pertinent parts, that Section provides that the Commission "may officially notice" (§ 307(d)(2)) facts and circumstances and if the Commission is "for any reason unable to make the [public interest, convenience and necessity] finding specified . . . it shall formally designate the application for hearing on the ground or reason then obtaining". It is axiomatic that before the Commission can find "any reason" it must first look.

in; not at the quality of the complainants' performance—we do not license complainants—but at the activities of the station.[3]

Accordingly, while I don't believe the Commission's action here is wholly unwarranted, it certainly could have gone further in fulfilling its own statutory function in these cases.

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[3] For an astringent reminder of the Commission's appropriate role in these renewal triangles, see Judge Burger's opinion in *Office of Communications of the United Church of Christ* v. *F.C.C.*, 138 U.S. App. D.C. 11, 425 F. 2d. 543 (1969).

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
ANTHONY R. MARTIN-TRIGONA, CHAMPAIGN, ILL.
To Revoke the License of Station WCIA-TV, Champaign, Ill.

JANUARY 17, 1973.

MR. ANTHONY R. MARTIN-TRIGONA,
Box 2508, Station A,
Champaign, Ill.

DEAR MR. MARTIN-TRIGONA: This refers to a letter from you received by the Commission May 17, 1972, which you ask "be taken as a request and petition to revoke the license of WCIA-TV, Channel 3, Champaign, Illinois."

You allege that the station has harassed you; that it carried a news broadcast which was inaccurate and misleading, and it sent a reporter to disrupt a news conference called by you; that the station refused access to the airwaves to you by refusing to give you time or to sell you time at a discount; and that "while ceaseless efforts are made to discredit" you, "similar efforts are made to glorify" a conservative legislator who is a law partner of the owner of the station.

By letter dated June 7, 1972, the licensee responded to your complaint through its counsel, Mr. Ernest W. Jennes. This response disputes most of the allegations set forth in your complaint and states that you have not shown in your letter that WCIA has harassed you or your activities. Attached to the licensee's response are copies of news stories to which you refer, court records upon which the licensee states the news reports were based, and a news report of your press conference, quoting similar charges by you against the licensee and a statement by you that you were asking this agency to revoke the license of WCIA.

Mr. Jennes' letter indicates that a copy was sent to you. However, the Commission has no record of receiving any comment from you upon the licensee's response or any refutation of it.

In light of this fact and of the fact that your allegations against the licensee are lacking in supporting evidence, it appears that no further Commission action is warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Wash-

ington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73-76

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
ORANGE CABLEVISION, INC., MAITLAND, FLA.	CAC-144. FL194
ORANGE CABLEVISION, INC., BELLE ISLE, FLA.	CAC-145. FL195
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 26, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, H. REX LEE AND REID CONCURRING IN THE RESULT; COMMISSIONER JOHNSON ABSENT.

1. On April 6, 1972, Orange Cablevision, Inc., filed applications for certificates of compliance for new cable television systems to operate at Maitland, Florida, and Belle Isle, Florida, both of which are located within the specified zones of the Orlando-Daytona Beach, Florida market (the 55th largest), and each of which will operate from the same head end. Each system proposes to provide the following Florida television signals to subscribers: WDBO-TV (CBS), WMFE-TV (Educ.) and WFTV (ABC), Orlando; WESH-TV (NBC), Daytona Beach; WUFT (Educ.), Gainesville; WEDU (Educ.), WUSF-TV (Educ.), and WTOG-TV (Ind.), Tampa; and WLTV (Spanish language) and WCIX (Ind.), Miami.[1] Public Notice of these applications was given April 26, 1972. And on May 15, 1972, the licensee of Station WMFE-TV, Orlando, Florida, filed a "Petition of Florida Central East Coast Educational Television, Inc." with respect to these applications.

2. On January 19, 1972, Orange requested waiver of former Section 74.1107(a) of the Commission's Rules to allow it to carry the distant signals of WUFT, WEDU, and WUSF-TV on its proposed system at Maitland. In the absence of objection of any sort, on February 28, 1972, the Chief, Cable Television Bureau, acting pursuant to authority delegated in Section 0.289(c)(12) of the Rules, granted Orange's request. A similar request was filed for Belle Isle on October 5, 1971, and similarly was granted December 2, 1971. Notwithstanding this history, Florida Central urges that we refuse to authorize Orange to carry the distant in-state signals on its proposed systems. In support of its request, Florida Central argues (a) that importation of distant educational signals will adversely affect its economic viability, (b) that earlier personnel of the station did not recognize the importance of distant signals; and (c) that the systems here proposed are within WMFE-TV's "sphere of influence." With respect to (c), on May 1, 1972, the managers of Educational Stations WEDU-TV, Tampa;

[1] A construction permit is outstanding for WSWB-TV, Orlando, and Orange wishes to carry it when it begins operation.

WJCT, Jacksonville; WUFT, Gainesville; and WMFE–TV, signed a joint agreement recognizing WMFE–TV's sphere of influence and stating that "we wish to express our desire that the other noncommercial signals being imported by CATV systems in the WMFE–TV sphere of influence be removed."

3. We rule on Florida Central's objections as follows: (a) (b) The allegations of possible impact are broad and only generally supported; nonetheless, it is not unlikely that they could prevail in the absence of countervailing considerations. Compare par. 94–95, *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 180, and *Norristown Distribution Systems, Inc.*, FCC 72–1095, —— FCC 2d ——. Such considerations seem present here in Florida Central's earlier failure to object to Orange's proposals which have led both Orange and the Commission to consider the question of distant educational signals on Orange's systems to be settled. While we recognize that educators may be pressed for finances or facilities to object fully to cable proposals, we do not believe that complete silence should be overlooked or that we should act to disturb this situation where the signals involved are clearly grandfathered, and (c) we are not persuaded of any public interest which requires that we recognize a "sphere of influence" for WMFE–TV which should prevent importation of in-state educational stations. See *Information Transfer, Inc.*, FCC 72–1094, ———FCC 2d———. In addition to these matters, we note *sua sponte* that Orange's franchises[2] are not fully consistent with Section 76.31 of the Rules (for example, the Belle Isle franchise has a 6% fee and the Maitland franchise has a fee of at least 7%). Nonetheless, our review of the franchises satisfies us that they are in substantial compliance with our rules sufficient to justify a grant until March 31, 1977. E.g., CATV of Rockford, Inc., FCC 72–1005, ———FCC 2d———.

In view of the foregoing, the Commission finds that a grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition of Florida East Coast Educational Television, Inc." filed May 15, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned applications (CAC–144, CAC–145) ARE GRANTED and appropriate certificates of compliances will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[2] The Maitland franchise was granted December 14, 1971, and the Belle Isle franchise was granted August 4, 1970.

F.C.C. 73–79

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re ORANGE CABLEVISION, INC. WINDERMERE, FLA. For Certificate of Compliance	CAC–143 FL193

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, H. REX LEE AND REID CONCURRING IN THE RESULT; COMMISSIONER JOHNSON ABSENT.

1. On April 6, 1972, Orange Cablevision, Inc., filed an application for certificate of compliance for a new cable television system to operate at Windermere, Florida, which is located within the specified zones of the Orlando-Daytona Beach, Florida market (the 55th largest). The system proposes to provide the following Florida television signals to subscribers: WDBO–TV(CBS), WMFE–TV(Educ.) and WFTV(ABC), Orlando; WESH–TV(NBC), Daytona Beach; WUFT(Educ.), Gainesville; WEDU(Educ.), WUSF–TV(Educ.), and WTOG–TV (Ind.), Tampa; and WLTV (Spanish language) and WCIX (Ind.), Miami.[1] Public notice of the application was given April 26, 1972. And on May 15, 1972, the licensee of Station WMFE–TV, Orlando, Florida filed a "Petition of Florida Central East Coast Educational Television, Inc." with respect to the application.

2. On October 5, 1971, Orange requested waiver of former Section 74.1107(a) of the Commission's Rules to allow it to carry the distant signals of WUFT, WEDU, and WUSF–TV on its proposed system at Windermere. In the absence of objection of any sort, on December 2, 1971, the Chief, Cable Television Bureau, acting pursuant to authority delegated in Section 0.289(c)(k) of the Rules, granted Orange's request. Notwithstanding this history, Florida Central urges that we refuse to authorize Orange to carry the distant in-state signals on its proposed system. In support of its request, Florida Central argues (a) that importation of distant educational signals will adversely effect its economic viability, (b) that earlier personnel of the station did not recognize the importance of distant signals; and (c) that the system here proposed is within WMFE–TV's "sphere of influence." With respect to (c), on May 1, 1972, the managers of Educational Stations WEDU–TV, Tampa, WJCT, Jacksonville; WUFT, Gainesville; and WMFE–TV, signed a joint agreement recognizing WMFE–TV's sphere of influence and stating that "we wish to express our desire that the other noncommercial signals being imported by CATV systems in the WMFE–TV sphere of influence be removed."

[1] A construction permit is outstanding for WSWB-TV, Orlando, and Orange wishes to carry it when it begins operation.

3. We rule on Florida Central's objections as follows: (a) (b) The allegations of possible impact are broad and only generally supported. Nonetheless, it is not unlikely that they could prevail in the absence of countervailing considerations. Compare par. 94–95, *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 180, and *Norristown Distribution Systems, Inc.*, FCC 72–1095, ——— FCC 2d ———. Such considerations seem present here in Florida Central's earlier failure to object to Orange's proposal which has led both Orange and the Commission to consider the question of distant educational signals on Orange's system to be settled. While we recognize that educators may be pressed for finances or facilities to object fully to cable proposals, we do not believe that complete silence should be overlooked or that we should act to disturb this situation where the signals involved are clearly grandfathered, and (c) we are not persuaded of any public interest which requires that we recognize a "sphere of influence" for WMFE–TV which should prevent importation of in-state educational stations. See *Information Transfer, Inc.*, FCC 72–1094, ——— FCC 2d ———. In addition to these matters, we note *sua sponte* that Orange's franchise [2] is not fully consistent with Section 76.31 of the Rules (for example, it contains a franchise fee which can reach 8½%). Nonetheless, our review of the franchise satisfies us that it is in substantial compliance with our rules sufficient to justify a grant until March 31, 1977. E.g., *CATV of Rockford, Inc.* FCC 72–1005, ——— FCC 2d ———.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition of Florida East Coast Educational Television, Inc." filed May 15, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application (CAC–142) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[2] The franchise was granted January 18, 1971.

F.C.C. 73–81

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
ORANGE CABLEVISION, INC., APOPKA, FLA. } CAC–142
For Certificate of Compliance } FL192

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, H. REX LEE AND REID CONCURRING IN THE RESULT.

1. On April 6, 1972, Orange Cablevision, Inc., filed an application (CAC–142) for certificate of compliance for a new cable television system to serve approximately 5,800 persons at Apopka, Florida, which is located within the specified zones of the Orlando-Daytona Beach, Florida market (the 55th largest). The system proposes to provide the following Florida television signals to subscribers: WDBO–TV (CBS), WMFE–TV (Educ.), and WFTV (ABC), Orlando; WESH–TV (NBC), Daytona Beach; WUFT (Educ.), Gainesville; WEDU (Educ.), WUSF–TV (Educ.) and WTOG–TV (Ind.), Tampa; and WLTV (Spanish language) and WCIX (Ind.), Miami.[1] Public notice of this application was given April 12, 1972. And on May 15, 1972, the licensee of Station WMFE–TV, Orlando, Florida, filed a "Petition of Florida Central East Coast Educational Television, Inc." with respect to this application.

2. The present application is one of a number filed in the Orlando area by Orange (and the related company, Seminole Cablevision, Inc.). In the other applications, carriage of the distant in-state educational signals was earlier authorized and hence grandfathered under the Commission's cable television rules. There is no such grandfathering in this case. Florida Central urges that we refuse to authorize Orange to carry the distant in-state signals on its proposed systems. In support of its request, Florida Central argues (a) that importation of distant educational signals will adversely affect its economic viability, (b) that earlier personnel of the station did not recognize the importance of distant signals; and (c) that the system here proposed is within WMFE–TV's "sphere of influence." With respect to (c), on May 1, 1972, the managers of Educational Stations WEDU–TV, Tampa; WJCT, Jacksonville; WUFT, Gainesville; and WMFE–TV, signed a joint agreement recognizing WMFE–TV's sphere of influence and stating that "we wish to express our desire that the other noncommercial signals being imported by CATV systems in the WMFE–TV sphere of influence be removed."

[1] A construction permit is outstanding for WSWB–TV, Orlando, and Orange wishes to carry it when it begins operation.

3. We rule on Florida Central's objections as follows: (a) (b) The allegations of possible impact are broad and only generally supported; nonetheless, it is not unlikely that they could prevail in the absence of countervailing considerations. Compare par. 94–95, *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d, 143, 180, and *Norristown Distribution Systems, Inc.*, FCC 72–1095,———FCC 2d———. Such considerations seem present here in Florida Central's earlier failure to object to Orange's other proposals in the Orlando area which have led both Orange and the Commission to consider the question of distant educational signals on Orange's systems to be settled. In view of the small size of the proposed Apopka system, and the fact that we are approving carriage of the distant in-state educational signals to all other cable television systems operating from the same head end, we do not believe it would be desirable to disrupt the Orlando-area plans on this system only. (c) We are not persuaded of any public interest which requires that we recognize a "sphere of influence" for WMFE–TV which should prevent importation of in-state educational stations. See *Information Transfer, Inc.*, FCC 72–1094, ———FCC 2d ———. In addition to these matters, we note *sua sponte* that Orange's franchise [2] is not fully consistent with Section 76.31 of the Rules (for example, an initial franchise fee of 8% which falls to 5% after three years). Nonetheless, our review of the franchise satisfies us that it is in substantial compliance with our rules sufficient to justify a grant until March 31, 1977. E.g., *CATV of Rockford, Inc.*, FCC 72–1005, ——— FCC 2d———.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition of Florida East Coast Educational Television, Inc." filed May 15, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application (CAC–142) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[2] The franchise was granted February 24, 1972.

F.C.C. 72–1172

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
PENNSYLVANIA HUMAN RELATIONS COMMISSION CONCERNING EMPLOYMENT DISCRIMINATION COMPLAINT BY MS. LUE EDNA MORGAN

DECEMBER 20, 1972.

Mr. HOMER C. FLOYD, *Executive Director, Commonwealth of Pennsylvania, Governor's Office, Human Relations Commission, Post Office Box 3154, Harrisburg, Pa. 17105*

DEAR MR. FLOYD: This is in reference to your letters dated May 15, July 27 and August 7, 1972, concerning Stations KQV, WDVE–FM, WEDO, WAMO–AM–FM, WJAS–AM–FM, WTAE–TV, KDKA–AM–FM–TV, WIIC–TV, WQED–TV and WQEX–TV, all of which are located in the Pittsburgh, Pennsylvania area.

Your letters pertain to a complaint of employment discrimination filed against each of the above-noted stations by Ms. Lue Edna Morgan, also known as and doing business as Etta Moro Morgan. Ms. Morgan charges each of the stations with discriminating against her in their hiring practices for such positions as host, producer, announcer and news reporter. Ms. Morgan also charges the stations with otherwise maintaining limited employment opportunities for blacks, women and women age forty and over.

Pursuant to your request the Commission's staff has deferred final action on the renewal applications for the above-noted stations since August 1, 1972. However, based upon our review of the information available, the Commission is of the opinion that it should not continue to defer action on the basis of Ms. Morgan's complaint. As we stated in our 1969 *Report and Order*, 18 FCC 2d 240, wherein we adopted rules pertaining to non-discrimination in broadcast employment, not every complaint of an isolated action, even if substantial, will warrant deferring action on a renewal application. It has, therefore, been the Commission's practice not to defer action on renewal applications on the basis of a discrimination complaint being investigated by another federal, state, or local agency. Rather, in such cases, the Commission will defer action to the appropriate federal, state, or local agency and, if necessary, take action after that agency has made its final determination.

We would appreciate being notified of any determinations which are made and any action which is taken by the Pennsylvania Human Relations Commission in connection with your current investigations.

Commissioner Johnson dissenting and issuing a statement, Commissioner Hooks dissenting.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

Dissenting Opinion of Commissioner Nicholas Johnson

Today the Federal Communications Commission precludes a state's civil rights commission from filling the void which we euphemistically describe as our "equal employment opportunities program."

Since August 1, 1972, this Commission has deferred action on the renewal applications of numerous broadcast stations in the Pittsburgh, Pennsylvania, area. That action was requested by the Pennsylvania Human Relations Commission (PHRC), which organization was, and still is, investigating complaints of employment discrimination filed against these stations.

In theory, the FCC has its own procedures for ensuring that our licensees do not engage in discriminatory employment practices. *See Nondiscrimination Employment Practices of Broadcast Licensees*, 13 FCC 2d 766 (1968); 18 FCC 2d 240 (1969); 23 FCC 2d 430 (1970); *Pennsylvania and Delaware Renewals*, 36 FCC 2d 515 (1972). However, as I have remarked on prior occasions, *see Pennsylvania and Delaware Renewals—Equal Employment Opportunity Inquiries*, ——— FCC 2d ——— (1972), our efforts in this area are, by and large, laughable.

The PHRC has, in essence, offered to do at least part of our job for us. Since the majority is not willing to determine for itself whether its licensees in the Pittsburgh area have engaged in discriminatory employment practices, *see, e.g., Pennsylvania and Delaware Renewals—Equal Employment Opportunity Inquiries, supra*, the PHRC has determined to make that effort and, thus, to fill the void which we created.

The majority's reaction to the state agency's gesture is to renew each of the contested licenses. The state has deemed the complaints made against these stations serious enough to warrant both an investigation and a request to this Commission for deferral. The majority, however, literally ignores the state's judgment and pays no heed to traditional notions of comity. It is as if this Commission had renewed several licenses in the face of pending and unresolved petitions to deny those license renewals based on grounds of discriminatory employment practices.

At best, the majority has exhibited considerable disrespect for an important agency of the Pennsylvania state government. At worst, the majority has confirmed once again that it is simply not terribly troubled by the fact that large numbers of our licensees might well be engaging in discriminatory employment practices.

I dissent.

F.C.C. 72-1173

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice of
REQUEST FOR WAIVER OF PRIME TIME ACCESS RULE

DECEMBER 20, 1972.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), ROBERT E. LEE, H. REX LEE, REID, WILEY AND HOOKS, WITH COMMISSIONER JOHNSON ABSTAINING FROM VOTING, ISSUED THE FOLLOWING PUBLIC NOTICE.

NOTICE OF REQUEST FOR WAIVER OF PRIME TIME ACCESS RULE

Public Notice is hereby given of a request for waiver of the "prime time access rule", Section 73.658(k) of the Commission's Rules, filed on November 29, 1972 by Children's Television Workshop (CTW) ("Petition by Children's Television Workshop"). The request seeks waiver of the limitation on network prime-time programming (to three hours a night) so as to permit a network to present a prime time half-hour weekly children's program, to the extent of 26 original programs and 26 repeats, starting about January 1974, in addition to the usual three hours of network programming.

In line with a policy recently adopted concerning requests for waiver of the "off-network" provisions of the rule,[1] it is believed that interested parties should have opportunity to comment on this request before the Commission considers it. Accordingly, notice is hereby given that no action will be taken by the Commission at least until January 31, 1973, and that interested parties may file comments concerning the request through January 12, 1973. Petitioner, or other parties wishing to reply to comments concerning the petition, may file replies through January 22, 1973.

Issuance of this public notice does not represent any Commission view as to the merit of the request, or as to whether it will be appropriate to reach any decision as to it in advance of the over-all rule making proceeding decision concerning the prime time access rule, Docket 19622. The latter is expected early next spring.

Copies of the CTW petition, and of any responsive comments which are filed, may be examined at the Commission's Office of Network Study, Room A-323, Federal Communications Commission Annex (Howitch Building), 1229 20th Street, N.W., Washington, D.C.

[1] See *Time-Life Films*, FCC 72-985, 25 R.R. 2d 793, released November 9, 1972. The present request involves network programming, rather than the "off-network" waiver requests specifically dealt with in that decision and the procedure set forth therein; but the general considerations involved are much the same, so that public notice in the present case is appropriate also.

F.C.C. 72-1032

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
INTERIM POLICY FOR NETWORK-SHOWN MOVIES IN RELATION TO THE "OFF NETWORK" AND "FEATURE FILM" PROVISIONS OF THE PRIME TIME ACCESS RULE (SEC. 73.658(k)(3))

NOVEMBER 17, 1972.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), ROBERT E. LEE, REID, WILEY AND HOOKS, WITH COMMISSIONER JOHNSON DISSENTING AND COMMISSIONER H. REX LEE DISSENTING AND ISSUING A STATEMENT, ISSUED THE FOLLOWING PUBLIC NOTICE.

INTERIM POLICY WITH RESPECT TO NETWORK-SHOWN MOVIES IN RELATION TO THE "OFF-NETWORK" AND "FEATURE FILM" PROVISIONS OF THE PRIME TIME ACCESS RULE (§ 73.658(k)(3))

Effective October 1, 1972, Section 73.658(k)(3) of the Commission's Rules, part of the Prime Time Access Rule, provides that the portion of prime time from which network programs are excluded may not be filled with:

"off-network programs; or feature films which within two years prior to the date of broadcast have been previously broadcast by a station in the market."

A number of parties have raised the question as to how a "feature film" previously presented in the market as a network program is affected by the rule: is it an "off-network program" and therefore barred permanently from the cleared portion of prime time, or a "feature film" so barred only for two years after its previous broadcast in the market?

The question has also been asked as to whether a film is regarded as "feature film" in this connection even if it was originally produced for television, rather than theatre, exhibition.

The rule in these respects is not clear. Clarification and possible modification of it in these respects, as well as other questions concerning the showing of movies in "cleared" prime time, are included in the general Notice of Inquiry and Notice of Proposed Rule Making adopted October 26, 1972, in Docket 19622 (pars. 41–44). Decision in this proceeding is expected early in 1973, and rule changes adopted in these areas are likely to be made effective October 1, 1973, or before.

In view of the short period anticipated before that decision, and since there appears to be no urgent need for action this season in light of present patterns of operation, there is no need for a formal interpretation of the present rule. Rather, it is appropriate simply to state that the Commission will not take enforcement action against licensees

who have construed the rule in the more liberal fashion, and whose stations therefore are presenting or will present movies shown on a network more than two years before, including both movies made for theatre use and those made primarily for television.

It is emphasized that this policy will apply only until the decision in the Docket 19622 proceeding and the effective date of the rule changes in this respect adopted therein. Parties are on notice that such changes may include adoption of the more restrictive interpretation mentioned above, treating network-shown movies as "off-network" programs.

DISSENTING STATEMENT OF COMMISSIONER H. REX LEE

Section 73.658(k)(3) of the "Prime Time Access Rule" provides that the portion of prime time from which network programming is excluded may not be filled with "off-network programs" or "feature films which within two years prior to the date of broadcast have been previously broadcast by a station in the market." Several affected parties have raised questions concerning the effect of the rule on "feature films" previously presented in a market as network programs. They have asked whether such films are to be considered "off-network programs," which are barred permanently from the cleared portion of prime time, or "feature films," which are barred only for two years after their previous broadcast in a market. The majority prefers to avoid clarification of the rule at this time since: (1) the rule is ambiguous insofar as a distinction between "off-network programs" and "feature films" is concerned; and (2) similar questions have been raised in the Commission's *Notice of Inquiry and Notice of Proposed Rule Making in Docket No. 19622*, adopted October 26, 1972, which is expected to be concluded expeditously. In the meantime, the majority indicates that it will not take enforcement action against any licensee who has construed the rule liberally in regard to the broadcast of feature films previously shown by a network, including films made for theatre distribution and those made primarily for television exhibition. Since I cannot agree with such an approach, I have dissented to the issuance of the Public Notice.

Our announced intent in adopting the "Prime Time Access Rule" was to correct the obvious imbalance in television production and distribution processes, which worked to the disadvantage of independent program producers. In effect, the Commission attemped to lessen the high degree of network domination of station operation and to provide a healthy impetus to the development of new program sources and ideas. Therefore, in the *Report and Order in Docket No. 12782*, 23 FCC 2d 382, 18 RR 2d 1825 (1970), we provided that stations in the top 50 television markets could not fill the cleared portion of prime time with "off-network syndicated series programs" or "feature films previously broadcast in the market." In regard to the feature film prohibition, the Commission stated:

We have also dealt with feature film in this respect, because if the network affiliates were to adopt the general practice of substituting feature film for network fare as a means of meeting the requirements of our rules, it would frustrate

109-025—73——6

the purposes of the rule. We have therefore also proscribed the use of feature film which has been previously broadcast in the market as a means of meeting the requirements of the rule. See 23 FCC 2d at 395, 18 RR 2d at 1843.

In affirming the rule generally on reconsideration, we indicated that Section 73.658(k)(3) does not prevent an affiliate from "substituting its own feature film for a network feature or for other network programming." 25 FCC 2d 318, 333, 19 RR 2d 1869, 1888 (1970). This language clearly indicated an intent to preclude the use of feature films by stations during the cleared portion of prime time. While the provision was amended to incorporate a two-year limitation on the prohibition against the rebroadcast of feature films, the modification was meant only to ease the administrative burden on stations in determining what feature films have been previously broadcast in the market. It is more than apparent that the two-year limitation was not intended to create a distinction between "off-network programs" and "feature films" so that films carried by networks could not be classified as "off-network programs" or films produced for initial television exhibition could qualify for the "feature film" provision.

Since the "Prime Time Access Rule" is in full force and effect today, we should consider requests for clarification of its provisions even though the very matters raised by affected parties are contained in the current *Notice of Inquiry*. I do not think that it is wise to indicate that we will not enforce requirements of the rule against those licensees who may have construed its provisions in a manner to conform to their own personal interests. In effect, the failure to enforce the rule is as much an action as a clarification or interpretation since it frustrates the announced purpose of the rule, *i.e.*, to clear a portion of prime time for local and non-network programming. Admittedly, the language of our rule is not precise—many of our regulations suffer from the same infirmity and require *ad hoc* interpretation—however, our decision here should be a relatively easy one to make in light of the objectives of the rule. In order to make more prime time available to independent program producers and to discourage the presentation of feature films by stations during the cleared portion of prime time, we should hold that feature films carried by a network—whether intended for theatre or television exhibition—are to be treated as "off-network programs" and are barred permanently from the cleared portion of prime time. Consistent with such an interpretation, the only feature films that would be available for station use in "cleared" prime time would be those network-originated films that had not been carried in a particular market and those that had not been shown on a network and had not been broadcast in a market for two years.

In my own opinion, therefore, the more forthright approach would be to honor requests for clarification of an existing rule that has substantial impact on affected parties. While I am aware of the fact that some licensees have invested funds in the acquisition of film rights on the basis of a "liberal" interpretation of Section 73.658(k)(3), I do not find that consideration to be dispositive, especially in light of the clearly articulated purpose of the rule. Moreover, it should be noted that the effective date of the rule was postponed to permit the unrestricted use of programming already purchased by stations. The further fact that we have initiated an inquiry into the effect and oper-

ation of the "Prime Time Access Rule" should likewise provide no basis for retreat from full enforcement of its provisions. In this regard, I should add that my views here do not constitute a prejudgment of the matters raised in Docket No. 19622—to the contrary, I specifically reserve the right to review these matters in the context of that proceeding.

For these reasons, I am unable to join with the majority in the issuance of the Public Notice.

F.C.C. 73-56

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of RADIO STAMFORD, INC., STAMFORD, CONN. Requests 1400 kHz, 250 W, 1 kW-LS, U (the Facilities of WSTC) For Construction Permit	File No. BP-19162

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 24, 1973)

BY THE COMMISSION.

1. The Commission has before it for consideration (i) a petition for reconsideration filed by Radio Stamford, Inc.; (ii) a Western Connecticut Broadcasting Company opposition thereto; and (iii) the petitioner's reply.[1]

2. On October 7, 1970, the Commission adopted an order and notice (FCC 70-1093, released October 8, 1970, Docket No. 19043) directing Western Connecticut Broadcasting Company to show cause why an order revoking the licenses of stations WSTC (AM, FM), Stamford, Connecticut, should not be issued, and notifying it that, alternatively, it could be liable for a $10,000 forfeiture. The WSTC licenses were not due to expire until April 1, 1972. After the record in the revocation proceeding had been closed, the licensee filed its renewal applications, and Radio Stamford thereafter filed a timely competing application against the WSTC(AM) renewal application.

3. The Commission, by its Memorandum Opinion and Order, 35 FCC 2d 776 (1972), accepted Radio Stamford's application for filing, but delayed further action on it until resolution of the related revocation proceeding, in view of the fact that the record in that proceeding had been closed and proposed findings had already been filed. The petitioner seeks reconsideration of this deferral, specifically, termination of the revocation proceeding and designation of the WSTC renewal application and its competing application for comparative hearing. An Initial Decision was released in the revocation proceeding on August 4, 1972, exceptions thereto were filed on October 2, 1972, and the matter is now awaiting oral argument.

4. The petitioner argues that any further delay in commencement of a comparative renewal hearing would be prejudicial to the public interest as tending to stifle the competition vital to responsive, public-spirited broadcasting. It is our view that healthy competition is not chilled where, as here, a revocation proceeding already far advanced continues beyond the end of the three-year license term. On the con-

[1] In addition, Radio Stamford filed a "Petition for Leave to Supplement Petition for Reconsideration" and a "Supplement to Petition for Reconsideration," and WSTC filed an opposition thereto.

trary, the license remains in jeopardy until our final decision in the matter and, if the license should be revoked, the WSTC renewal application will be dismissed, Radio Stamford's application will receive its own cut-off date, and the Commission will consider all timely filed applications, not just that of Radio Stamford, Inc.[2]

5. The petitioner's other arguments were fully discussed and considered in our Memorandum Opinion and Order, 35 FCC 2d 776, *supra*, and it is not necessary to repeat that discussion here. It suffices to say that our reasons for refusing to terminate the revocation proceeding and institute a comparative renewal-new application proceeding are even more compelling now, because of the advanced status of the revocation proceeding. The petitioner has made no new arguments, and has cited no case law not previously considered by the Commission.

6. The petitioner has requested leave to supplement its petition with a discussion of *Seaboard Broadcasting Corp.*, FCC 70–272, 18 RR 2d 849 (1970), which is clearly distinguishable. There the revocation proceeding had not even begun when it was consolidated with the renewal proceeding. *Leflore Broadcasting Co.*, 36 FCC 2d 101 (1972), also cited by the petitioner, is inapposite since, while Radio Stamford's petition comes near the end of the hearing process, in *Leflore* a hearing has not even been ordered, much less completed.

7. For the reasons stated above and in our previous Memorandum Opinion and Order, the petition for reconsideration and the petition for leave to supplement the petition for reconsideration ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[2] As we indicated previously, if WSTC's license is not revoked its renewal application and Radio Stamford's application will be designated for comparative hearing.

F.C.C. 72D-76

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of THE SANDHILL COMMUNITY BROADCASTERS, INC., SOUTHERN PINES, N.C. For Construction Permit	Docket No. 19350 File No. BPH-7444

APPEARANCES

Benedict P. Cottone and *David Meyers* for Sandhill; and *Gerald M. Zuckerman* and *Katherine Savers McGovern* for the Chief, Broadcast Bureau, Federal Communications Commission. (Arthur V. Weinberg and John E. Fiorini III appeared for William R. Gaston, Docket No. 19349, File No. BPH-7380, whose application has since been granted, see FCC 72M-1404.)

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE HERBERT SHARFMAN

(Issued November 24, 1972; Effective January 19, 1973 pursuant to Section 1.276 of the Commission's Rules)

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

1. This document issues in the form of an Initial Decision on the remaining matter applicable to Sandhill, though its application has been dismissed, pursuant to an agreement and joint request, by order released November 14, 1972 (FCC 72M-1404).

2. The proceeding had been designated for hearing to determine the comparative merits of William R. Gaston and Sandhill, both applicants for FM Channel 296 in Southern Pines. After the initial designation, the Review Board enlarged the issues against Sandhill as follows (35 F.C.C. 2d 624, 632):

To determine the efforts made by The Sandhill Community Broadcasters, Incorporated to ascertain the community needs and interests of the area to be served by its proposed station and the means by which the applicant proposes to meet those needs and interests; and

To determine whether The Sandhill Community Broadcasters, Incorporated has failed to comply with the provisions of Sections 1.514(a) and 1.65 of the Commission's Rules and, if so, to determine the effect of such non-compliance upon the applicant's basic or comparative qualifications to be a Commission licensee.

Before the hearing of November 1, 1972, the applicants entered into a dismissal agreement calling for a grant of Gaston's application and reimbursement of Sandhill for its expenses in an amount approved by the Commission up to $8500. As noted above, Gaston's application has been granted. Payment to Sandhill is dependent upon a favorable ruling on the Rules 1.514(a)-1.65 issue—the comparative and community survey issues are now moot. Evidence at the hearing was appropriately limited. Sandhill and the Bureau filed proposed findings of

fact and conclusions on November 21, 1972. Although Sandhill's proposed findings are entirely adequate, in the interest of convenience the following paragraphs are taken, with only a few changes, mainly editorial, from the Bureau's pleading.

3. Sandhill's application was filed on April 5, 1971. Section II of the application shows that Jack S. Younts (President of Sandhill) owned a 50% interest and was an officer and director of Sandhill Community Antenna Corporation from 1965–1970. The application did not report any interest by Younts in SCAC beyond 1970.

4. SCAC has been awarded three CATV franchises, including one for Southern Pines on June 9, 1970. Until January 15, 1971, Younts was an officer, director and 50% owner of SCAC. On that date 90% of the stock in SCAC was purchased by American Television Communications and Younts' 50% interest was reduced to 5%. On June 28, 1971, Younts exercised an option which increased his interest in SCAC from 5% to 15%.

5. Before January 15, 1971, Younts had been President of SCAC. He then became a Vice-President of the corporation. He has always been a director. Section II of FCC Form 301 requires principals to report all business interests "in which such party has now or within the past 5 years has had either a 25% or greater interest *or any official relationship*" (emphasis supplied). Younts should have reported his relationship and interest with SCAC when the Sandhill application was filed; he retained an "official relationship" although his ownership interest had been reduced to less than 25%. Until December 1966, Younts had an ownership interest in Rockingham-Hamlet Cablevision, Inc. Although his ownership interest was less than 25%, Younts was an officer and director of that corporation. Younts did not report his interest in the Rockingham-Hamlet corporation in his Sandhill application, which was filed within five years of December 1966.

6. On December 16, 1971, Younts was informed by his counsel that he should have reported his connection with SCAC. An amendment to the Sandhill application was tendered on that day, reflecting Younts' continued interest with SCAC and his former interest in Rockingham-Hamlet. On December 23, 1971, Gaston filed its petition to enlarge the issues, based, in part, on Sandhill's failure to reflect in its original application the continuing interest Younts had in SCAC.

7. Younts explained that he had misunderstood the directions in Section II of the application quoted above. He had believed that since his ownership interest had fallen below 25% after 1970, he need not report his SCAC interest or relationship in the application. He neglected to report his interest and relationship in Rockingham-Hamlet because his ownership interest was less than 25%.

8. The Sandhill application should have reflected that Younts' interest in SCAC did not terminate in 1970, but that he continued to have an ownership interest and was an officer and director of the CATV corporation. This information is not only called for by the application form itself, but is obviously relevant when the applicant is seeking to construct a radio station in the community for which the CATV system has a franchise. The application should also have shown that Younts had an interest in Rockingham-Hamlet Cablevision, Inc., and was an officer and director of that corporation until December 1966.

9. Younts, as already explained, lays the failure to show his continued interest in SCAC to his own misunderstanding of the directions in the application. There is no evidence to the contrary. It is also important to note that the corrective amendment was filed by Sandhill before the filing of the petition to enlarge. It can therefore be considered the uncoerced act of the applicant and not something reported in attempted exculpation only after the facts had been brought to the attention of the Commission by someone else.

10. Based on the above, it is concluded that Sandhill would not have been disqualified under the Rule 1.514(a) issue had it prosecuted its application, although it might have suffered a comparative demerit.

11. Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken to the Commission by a party or the Commission reviews the Initial Decision on its own motion, in accordance with Section 1.276 of the Rules, the remaining "character" issue is resolved in Sandhill's favor, and Sandhill may be reimbursed by Gaston in the sum of $8500, as provided in their dismissal agreement.

HERBERT SHARFMAN,

Administrative Law Judge,
Federal Communications Commission.

F.C.C. 72-924

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
SOCIALIST WORKER PARTY 1972, NEW YORK, N.Y.
Concerning Equal Opportunity Under Section 315 Re Metromedia, Inc.

OCTOBER 12, 1972.

Mr. LARRY SEIGLE, *National Campaign Manager, Socialist Workers Party 1972, Campaign Committee, 706 Broadway, 8th Floor, New York, N.Y.*

DEAR MR. SEIGLE: This is in response to your letters of August 5, 10 and 29, 1972 concerning various equal time requests for Socialist Workers Party Candidates.

In your correspondence you state that the then Democratic Party Vice Presidential candidate, Senator Thomas Eagleton, appeared on the "Merv Griffin Show" on July 27; that his appearance was a "use" under Section 315 of the Communications Act of 1934, as amended; and that Andrew Pulley, Vice Presidential candidate of the Socialist Workers Party requested equal time from Metromedia, Inc. within seven days of the first prior use. You note that subsequent to the application for equal time, Senator Eagleton withdrew as a candidate for Vice President. You state that Metromedia, Inc. denied Mr. Pulley's request for equal time because it believed that the withdrawal of Senator Eagleton made the request moot. In opposition to Metromedia's position you assert:

> It is clear that the claimant becomes entitled to equal opportunity at the time he submits his request, provided that all the criteria of Section 315 are met. Thus as of July 28, Mr. Pulley was entitled to equal time. How can this right be revoked, several days later by subsequent events? In theory, had Metromedia responded immediately to the request, Mr. Pulley could even had been granted his equal time before Senator Eagleton's withdrawal. The licensee's obligation to provide equal opportunity, already incurred, cannot be removed because of what subsequently happens to the candidate who appeared.

You declare that at the time Mr. Pulley asked for equal time the Socialist Workers Party had filed for ballot status in 15 states and been certified in six states; that the Socialist Workers Party has collected nearly 500,000 signatures on nominating petitions; that its candidates have toured the nation; that its campaign literature has been distributed nationwide; and that its campaign activities have been covered by the press and national radio and television networks. You state that Mr. Pulley has "established a *national* showing of a bona fide campaign, regardless of particular state laws." You conclude that he "should be entitled to equal time in all of the outlets that carried the July 27 Eagleton appearance." You further note that

dates for certifying candidates for the ballot vary widely from state to state and that in many states the deadline for filing nominating petitions is several months before the date on which final certifications are issued. You ask when candidates for President and Vice President, other than those of the two major parties, become subject to Section 315. You claim that the national showing by Mr. Pulley and the Socialists Workers Party of his bona fide candidacy should be enough to establish that he is a legally qualified candidate under Section 315.

In your correspondence you included articles which acknowledge that the Socialist Workers Party candidate for President, Ms. Linda Jenness, is 31 years old and the Vice Presidential candidate, Mr. Pulley, is 21 years old. You claim that despite the fact that both candidates fail to meet the presidential minimum constitutional age requirement of 35,[1] Ms. Jenness and Mr. Pulley are legally qualified candidates and should be granted equal time. You state that presidential elections are protected by the U.S. Constitution and cite *Oregon* v. *Mitchell*, 400 U.S. 112 (1971) to support your contention; that the Twentieth Amendment, Section 3 of the Constitution provides the procedure to be followed in the event of the election of a President or Vice President who is not qualified to take office; that the Twentieth Amendment gives Congress the power to provide by law for the case where neither the President nor Vice President has qualified before the time fixed for the beginning of their terms; that the Supremacy Clause, Article IV, Section 2 of the Constitution provides that the Constitution takes precedence over other state laws; that legislative history shows that the framers of the Twentieth Amendment foresaw the possible selection of a disqualified President-elect or Vice President-elect and decided to give people an opportunity to actually vote for persons ineligible to take office. You state:

> It is interesting to note that candidate Jenness comes within the terms of the last phase of Section 3, Amendment XX. The next presidential term will begin on January 20, 1973. (Amendment XX Section 1.) Linda Jenness will reach the age of 35 within the next presidential term. Thus, if she is elected, she will then qualify to take office on her thirty-fifth birthday. (Of course this assumes that no constitutional amendment is passed lowering the age requirement between her election and the beginning of the next presidential term. If such an even occurred she would then take office earlier than her thirty-fifth birthday.)

You further state:

> It is clear, therefore, that Constitutional Amendment, and subsequent Congressional action, has preempted this area and provided the course to follow should an underaged president be elected. The solution is left to Congress. Therefore, any attempt by the networks to deny Jenness or Pulley equal time on the grounds of their failure to meet the age limit set by the Constitution would be an impermissible infringement on their Constitutional rights.

In telephone conversations with members of the Commission's staff you stated these constitutional arguments are now pending before an Ohio court.

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[1] Article II, Section I, Clause 4 of the United States Constitution states that "No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained the Age of thirty-five years, and been fourteen years a resident within the United States." Further Article XII of the Constitution provides that ". . . no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States."

In further correspondence, you state that Ms. Jenness asked the National Broadcasting Company and the Mutual Broadcasting system for equal time to reply to those networks' broadcast of a speech made by Democratic Party nominee George McGovern on August 5, 1972; that NBC denied your request because Ms. Jenness is under 35 years of age and has not established that she is a legally qualified candidate for the presidency of the United States; and that Mutual Broadcasting System denied your request on the basis that the appearance of Senator McGovern was a news broadcast and exempt from the equal time regulation. In reply you state that "the decision of both networks infringe on Linda Jenness' right, as a bona fide candidate for the presidency of the United States, to equal time . . ."

In another matter involving a candidate of your party, you state that on April 26, 1972 Congressman Roman C. Pucinski, Democratic Party candidate for United States Senate from Illinois, appeared on station WTTW, Chicago; that Fred Halstead the Socialist Workers Party candidate for the same office asked WTTW for equal time; that Mr. Halstead is "in the process of complying with the state requirement to appear on the ballot"; and that the licensee of WTTW demanded a letter from the Secretary of State of Illinois declaring that Mr. Halstead was a legally qualified candidate as evidence of Mr. Halstead's bona fide status. You claim that the Secretary of State has no statutory authority nor is competent to rule on the bona fide character of a candidate: that his sole function in Illinois with regard to elections "is to order the placing on the ballot of those candidates who have met the requirements under state law"; that Illinois law did not allow Mr. Halstead to file his signatures until well after the appearance of Congressman Pucinski; that Mr. Halstead has collected 40,000 signatures and is carrying on a serious campaign; and that "If for any reason, he should be unsuccessful in his attempt to be listed on the ballot, he will run a vigorous write-in campaign." You further state:

> **If the Commission were to hold that a candidate who is in the process of getting on the ballot can only qualify for equal time after his certification by the Secretary of State, the Commission would be discriminating against those candidates who try to meet the ballot requirements, and in favor of those who content themselves with write-in campaigns, since a bona fide write-in candidate is eligible for equal time as soon as he launches his campaign.**
>
> **This would clearly be a denial of equal protection under the law.**

Section 315 of the Communications Act of 1934, as amended, states that if a licensee permits any person who is a legally qualified candidate for any public office to use a broadcasting station, he must afford "equal opportunities" to all other such candidates for that office in the use of such broadcasting station. If a legally qualified candidate appears on a bona fide newscast, bona fide news interview, bona fide documentary or on-the-spot coverage of a bona fide news event such an appearance will not be deemed a use of a broadcasting station for the purposes of Section 315.

Regarding the complaints of Linda Jennes and Andrew Pulley against Metromedia, Inc., National Broadcasting Company and Mutual Broadcasting System, you claim that despite the fact that both are under the minimum age of 35 as set by the Constitution in order to

be eligible as President and Vice-President they should for various reasons be considered to be legally qualified candidates. The Commission has repeatedly stated that a legally qualified candidate must be determined by reference to the law of the state in which the election is being held. In general a candidate is legally qualified under Section 315 if he can be voted for in the state or district in which the election is being held, and, if elected, is eligible to serve in the office in question. See *Use of Broadcast Facilities by Candidates for Public Office*, 35 Fed. Reg. 159, Public Notice of August 7, 1970, Section IV, Question and Answer number 1. The Commission agrees that the Twentieth Amendment provides the procedure to be followed in the event of the election of a president or vice president who is not qualified to take office. However, neither the legislative history which you cite nor the logical thrust of the Twentieth Amendment give us reason to overturn our interpretation of who is a legally qualified candidate for purposes of Section 315. It is clear from the facts before us that Ms. Jennes and Mr. Pulley if elected, would not be eligible to serve as President or Vice President because they do not meet the minimum age requirement of 35 as set by the Constitution. Therefore they cannot be considered legally qualified candidates for the offices of President and Vice President and Metromedia, Inc., National Broadcasting Company and Mutual Broadcasting System need not provide them with "equal opportunities" to reply to Senator Eagleton and Senator McGovern. The additional issues concerning Senator Eagleton's appearance and related to these complaints are moot unless Ms. Jenness and Mr. Pulley are legally qualified candidates, and it is unnecessary for the Commission to reach a decision on these issues.

In connection with your complaint regarding Fred Halstead, candidate for U.S. Senate from Illinois, you ask when third-party candidates for state office become eligible for equal time. The Commission does not differentiate between major party candidates and candidates of other parties. Any candidate who complies with the law of the state in which the election is being held is generally considered to be a legally qualified candidate. In addition Section 73.657(a) of the Commission's Rules defines a legally qualified candidate as:

> . . . any person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, state or national, and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate, so that he may be voted for by the electorate directly or by means of delegates or electors, and who:
>
> (1) Has qualified for a place on the ballot or
>
> (2) Is eligible under the applicable law to be voted for by sticker, by writing in his name on the ballot, or other method, and (i) has been duly nominated by a political party which is commonly known and regarded as such, or (ii) makes a substantial showing that he is a bona fide candidate for nomination or office, as the case may be.

Section 73.657(f) also provides that a "candidate requesting . . . equal opportunities of the licensee, or complaining of noncompliance to the Commission shall have the burden of proving that he and his opponent are legally qualified candidates for the same public office."

It is clear in this case that Mr. Halstead decided to get on the Illinois ballot via the petition method. It appears from the facts before

us that at the time of Congressman Pucinski's appearance and even at the time of this complaint more than three months later, Mr. Halstead's petitions still had not been certified nor his name officially placed on the ballot in Illinois.[2] Therefore, there is no basis for stating that he is a legally qualified candidate under the petition method until he is certified as such by the Illinois Secretary of State. See *Use of Broadcast Facilities by Candidates for Public Office, supra.* You state that Mr. Halstead will seek to become a write-in candidate for Senator if he is unsuccessful in his attempt to be placed on the ballot via the petition method. However, it is clear that as of the time of Congressman Pucinski's appearance on WTTW, and indeed for a considerable time thereafter, he had not attempted to become a write-in candidate and could not be considered a legally qualified candidate via the write-in method. At such time that Mr. Halstead chooses to conduct a write-in campaign, the question as to whether he is a bona fide write-in candidate and therefore legally qualified under the provisions of Section 73.657(a) and (f) will then be decided if a Commission determination becomes necessary at that time. (cf. *Anthony L. Bruno*, 26 FCC 2d 656 (1970)). In any event, it appears that Mr. Halstead was not a legally qualified candidate at the time of Representative Pucinski's appearance and therefore was not entitled to equal opportunities in connection with his April 26 appearance.

Commissioner Johnson dissenting and issuing a statement.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

Dissenting Opinion of Commissioner Nicholas Johnson

In its letter to Mr. Larry Seigle (National Campaign Manager for the Socialist Workers Party), the Commission majority plunges headlong into the decision of issues which would give our greataest jurists considerable pause. The question of who is or is not a "legally qualified candidate" for national office is far more complex than is indicated by the majority's shallow analysis.

Linda Jenness and Andrew Pulley are said to be the duly nominated candidates for President and Vice President of the Socialist Workers Party. As such, they are entitled to opportunities for access to the airwaves equal to those of their opponents, under Section 315 of the Communications Act of 1934, unless and until the Supreme Court has decided otherwise or until Congress has altered the Section.

Vice Presidential candidate Andrew Pulley requested equal time from Metromedia, Inc., following a July 27, 1972 appearance by then-Democratic Vice Presidential candidate Thomas Eagleton on the Merv Griffin Show. Metromedia refused, using only the argument that it believed that the withdrawal of Senator Eagleton made the request moot. Candidate Linda Jenness requested equal time from NBC and the Mutual Broadcasting System in order to reply to a speech made by

[2] In a telephone conversation on September 13, 1972 between you and a member of the Commission's staff you stated that Mr. Halstead's only basis for claiming that he was a legally qualified candidate to Station WTTW was that he was attempting to get on the ballot in Illinois via the petition method. You also state that Mr. Halstead is only conducting a petition drive and has not attempted to become a write-in candidate and will not attempt to become a write-in candidate unless he fails in his petition drive.

Democratic Party nominee George McGovern on August 5, 1972. While Mutual denied the request on the basis that the appearance of Senator McGovern was a news broadcast, NBC chose to deny the request because Ms. Jenness was under 35 years of age. The Commission has decided these two cases solely on its own interpretation of who is, or is not, a "legally qualified candidate." If Ms. Jenness and Mr. Pulley are not "legally qualified candidates," so the argument goes, none of the other issues need be reached. The Commission's rules include in the definition of "legally qualified candidate" the criteria that the candidate must met "the qualifications prescribed by the applicable laws to hold the office for which he is a candidate." The majority holds that both candidates, because they are too young to hold the office for which they are running are, therefore, not legal candidates for office.

The majority's mistake is in the slipshod application of its own *procedural* rules and "guidelines" in such a manner as to give them *substantive* validity. The majority states that "Any candidate who complies with the law of the state in which the election is being held is *generally* considered to be a legally qualified candidate." [emphasis added] In addition, the majority purports to define a "legally qualified candidate" within the context of its Rules.

I had always been under the impression that the U.S. Constitution took precedence over the Rules of the Federal Communications Commission. That Constitution gives the requirements for *holding* the two highest offices in this country. See Article 2, Section 1, Clause 4. It most certainly does not delineate the requirements for *candidates* to those offices, and moreover provides, in Amendment XX, Section 3, for the eventuality of the election of a President or Vice President not eligible otherwise to serve:

> If a President shall not have been chosen before the time fixed for the beginning of his term, *or if the President elect shall have failed to qualify*, then the Vice President elect shall act as President until a President shall have qualified; and Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified . . .

[emphasis added] I can find no other implication in the words of this Amendment than that the right of Ms. Jenness and Mr. Pulley to run for President and Vice President *and even to be elected to those offices* is a constitutionally protected one, regardless of the nature of their inability to serve.

In the case of 31-year-old Ms. Jenness, I need only reiterate petitioner's point that one need look no further than the Constitution to discover the procedure whereby she would be entitled to inauguration as President the moment she reaches her 35th birthday. Thus, the presumption made by the majority that "It is clear from the facts before us that Ms. Jenness and Mr. Pulley, if elected, would not be eligible to serve as President or Vice President . . ." does not, as it would insist, so simplistically lead to the assumption that the Socialist Worker Party candidates should be denied their legal rights as *candidates*.

The majority's action regarding Socialist Worker Party, U.S. Senate candidate Fred Halstead is, if anything, even less excusable than its resolution of the more complicated intellectual issues confronting Jenness and Pulley. I can find no justification for this denial even

within the context of a proper application of the Commission's Rules.

Mr. Halstead requested equal time from station WTTW, Chicago, after an appearance on April 26, 1972 by Congressman Roman C. Pucinski, the Democratic nominee for the U.S. Senate. The licensee of WTTW demanded a letter from the Secretary of State of Illinois declaring that Mr. Halstead was a "legally qualified candidate." However, petitioner submits that the Secretary of State has no statutory authority to rule on the *bona fide* character of a candidate, but only to certify the candidate onto the state ballot once he has submitted a sufficient number of nominating petitions. Moreover, Illinois law did not even *allow* Mr. Halstead to file his petitions until well after the appearance by Mr. Pucinski. The station, however, refused to grant Mr. Halstead the time, and the Commission has now upheld that refusal with what is at best a tortured misreading of its own Rules and definitions.

The Commission's Rules define a "legally qualified candidate" as one who either "(1) Has qualified for a place on the ballot or (2) *Is eligible under the applicable law* to be voted upon by sticker, by writing in his name on the ballot, or other method, and (i) has been duly nominated by a political party. . . ." § 73.657(a). [emphasis added]

The fact that Mr. Halstead is attempting to pursue the longer, more arduous process of getting his name on the ballot in Illinois by nominating petitions by no means renders him "ineligible" under Illinois law to be a write-in candidate. Yet this Commission has placed itself in the absurd position of penalizing Mr. Halstead, the "duly nominated" candidate of his party, for pursuing the former, even though he has expressed every intent of falling back on the status of "write-in" candidate should his petition drive fail. This decision, in effect, serves to deprive all minority or fringe party candidates of their not inconsiderable rights under Section 315 of the Communications Act for attempting to use other, equally precious, rights guaranteed them under our system of democracy.

F.C.C. 73-77

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
SEMINOLE CABLEVISION, INC., CASSELBERRY, FLA.	CAC-140 FL 191
SEMINOLE CABLEVISION, INC., WINTER SPRINGS, FLA.	CAC-141 FL 190
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, H. REX LEE AND REID CONCURRING IN THE RESULT. COMMISSIONER JOHNSON ABSENT.

1. On April 6, 1972, Seminole Cablevision, Inc., filed applications for certificates of compliance for new cable television systems to operate at Casselberry, Florida, and North Orlando (now Winter Springs), Florida, both of which are located within the specified zones of the Orlando-Daytona Beach, Florida market (the 55th largest), and each of which will operate from the same head end. Each system proposes to provide the following Florida television signals to subscribers: WDBO-TV(CBS), WMFE-TV(Educ.) and WFTV (ABC), Orlando; WESH-TV(NBC), Daytona Beach; WUFT (Educ.), Gainesville; WEDU(Educ.), WUSF-TV(Educ.), and WTOG-TV(Ind.), Tampa; and WLTV (Spanish language) and WCIX(Ind.), Miami.[1] Public Notice of these applications was given April 26, 1972. And on May 15, 1972, the licensee of Station WMFE-TV, Orlando, Florida, filed a "Petition of Florida Central East Coast Educational Television, Inc." with respect to these applications.

2. On January 19, 1972, Seminole requested waiver of former Section 74.1107(a) of the Commission's Rules to allow it to carry the distant signals of WUFT, WEDU, and WUSF-TV on its proposed systems at Casselberry and North Orlando (Winter Springs). In the absence of objection of any sort, on February 28, 1972, the Chief, Cable Television Bureau, acting pursuant to authority delegated in Section 0.289(c)(12) of the Rules, granted Seminole's request. Notwithstanding this history, Florida Central urges that we refuse to authorize Seminole to carry the distant in-state signals on its proposed systems. In support of its request, Florida Central argues (a) that importation of distant educational signals will adversely effect its economic viability, (b) that earlier personnel of the station did not recognize the importance of distant signals; and (c) that the systems

[1] A construction permit is outstanding for WSWB-TV, Orlando, and Seminole wishes to carry it when it begins operation.

here proposed are within WMFE–TV's "sphere of influence." With respect to (c), on May 1, 1972, the managers of Educational Stations WEDU–TV, Tampa; WJCT, Jacksonville; WUFT, Gainesville; and WMFE–TV, signed a joint agreement recognizing WMFE–TV's sphere of influence and stating that "we wish to express our desire that the other noncommercial signals being imported by CATV systems in the WMFE–TV sphere of influence be removed."

3. We rule on Florida Central's objections as follows: (a) (b) The allegations of possible impact are broad and only generally supported; nonetheless, it is not unlikely that they could prevail in the absence of countervailing considerations. Compare par. 94–95, *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 180, and *Norristown Distribution Systems, Inc.*, FCC 72–1095, ——— FCC 2d ———. Such considerations seem present here in Florida Central's earlier failure to object to Seminole's proposals which have led both Seminole and the Commission to consider the question of distant educational signals on Seminole's systems to be settled. While we recognize that educators may be pressed for finances or facilities to object fully to cable proposals, we do not believe that complete silence should be overlooked or that we should act to disturb this situation where the signals involved are clearly grandfathered, and (c) we are not persuaded of any public interest requires that we recognize a "sphere of influence" for WMFE–TV which should prevent importation of in-state educational stations. See *Information Transfer, Inc.*, FCC 72–1094, ——— FCC 2d ———. In addition to these matters, we note *sua sponte* that Seminole's franchises [2] are not fully consistent with Section 76.31 of the Rules (for example, both contain franchise fees of at least 7%). Nonetheless, our review of the franchises satisfies us that they are in substantial compliance with our rules sufficient to justify a grant until March 31, 1977. E.g., *CATV of Rockford, Inc.*, FCC 72–1005, ——— FCC 2d ———.

In view of the foregoing, the Commission finds that a grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition of Florida East Coast Educational Television, Inc." filed May 15, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned applications (CAC–140, CAC–141) ARE GRANTED and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[2] The Casselberry franchise was granted December 20, 1971, and the Winter Springs franchise was granted November 1, 1971.

109–025—73——7

F.C.C. 73–78

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re SEMINOLE CABLEVISION, INC., SANFORD, FLA. For Certificate of Compliance	CAC–77 FL188

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, H. REX LEE AND REID CONCURRING IN THE RESULT. COMMISSIONER JOHNSON ABSENT.

1. On April 6, 1972, Seminole Cablevision, Inc., filed an application (CAC–77) for certificate of compliance for a new cable television system to operate at Sanford, Florida, which is located within the specified zones of the Orlando-Daytona Beach, Florida market (the 55th largest). The system proposes to provide the following Florida television signals to subscribers: WDBO–TV (CBS), WMFE–TV (Educ.), and WFTV (ABC), Orlando; WESH–TV (NBC), Daytona Beach; WUFT (Educ.), Gainesville; WEDU (Educ.), WUSF–TV (Educ.) and WTOG–TV (Ind.), Tampa; and WLTV (Spanish language) and WCIX (Ind.), Miami.[1] Public notice of this application was given April 12, 1972. And on May 15, 1972, the licensee of Station WMFE–TV, Orlando, Florida, filed a "Petition of Florida Central East Coast Educational Television, Inc." with respect to this application.

2. On May 19, 1971, Seminole requested waiver of (former) Section 74.1107 of the Commission's Rules to allow it to carry the distant signals of WUFT, WEDU, and WUSF–TV on its proposed system at Sanford, Florida. In the absence of objection of any sort, on September 16, 1971, the Chief, Cable Television Bureau, acting pursuant to authority delegated in Section 0.289(c)(12) of the Rules, granted Seminole's request. Notwithstanding this history, Florida Central urges that we refuse to authorize Seminole to carry the distant in-state signals on its proposed systems. In support of its request, Florida Central argues (a) that importation of distant educational signals will adversely affect its economic viability, (b) that earlier personnel of the station did not recognize the importance of distant signals; and (c) that the system here proposed is within WMFE–TV's "sphere of influence". With respect to (c), on May 1, 1972, the managers of Educational Stations WEDU–TV, Tampa; WJCT, Jacksonville; WUFT, Gainesville; and WMFE–TV, signed a joint agreement recognizing WMFE–TV's sphere of influence and stating that "we wish to express our desire that the other noncommercial signals being imported by CATV systems in the WMFE–TV sphere of influence be removed."

[1] A construction permit is outstanding for WSWB–TV, Orlando, and Seminole wishes to carry it when it begins operation.

3. We rule on Florida Central's objections as follows: (a) (b) The allegations of possible impact are broad and only generally supported; nonetheless, it is not unlikely that they could prevail in the absence of countervailing considerations. Compare par. 94–95, *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d, 143, 180, and *Norristown Distribution Systems, Inc.*, FCC 72–1095, ——— FCC 2d ———. Such considerations seem present here in Florida Central's earlier failure to object to Seminole's proposal which have led both Seminole and the Commission to consider the question of distant educational signals on Seminole's system to be settled. While we recognize that educators may be pressed for finances or facilities to object fully to cable proposals, we do not believe that complete silence should be overlooked or that we should act to disturb this situation where the signals involved are clearly grandfathered, and (c) we are not persuaded of any public interest which requires that we recognize a "sphere of influence" for WMFE–TV which should prevent importation of in-state educational stations. See *Information Transfer, Inc.*, FCC 72–1094, ——— FCC 2d ———. In addition to these matters, we note *sua sponte* that Seminole's franchise [2] is not fully consistent with Section 76.31 of the Rules (for example, a franchise fee of at least 7%). Nonetheless, our review of the franchise satisfies us that it is in substantial compliance with our rules sufficient to justify a grant until March 31, 1977. *E.g.*, *CATV of Rockford, Inc.*, FCC 72–1005, ——— FCC 2d ———.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition of Florida East Coast Educational Television, Inc." filed May 15, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application (CAC–77) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[2] The franchise was granted September 14, 1970.

F.C.C. 72-1199

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
SANDRA STARK, HAMDEN, CONN.
For Waiver of Fee

DECEMBER 22, 1972.

MRS. SANDRA STARK,
14 Briar Lane,
Hamden, Conn.

DEAR MRS. STARK: With respect to your letter dated June 15, 1972, to this Commission, your communication with the United States Commission on Civil Rights and the Women's Bureau of the United States Department of Labor, this is to advise you that this Commission has today waived its rules requiring payment of an $8.00 fee for the reissuance of your restricted radiotelephone operator permit in your married name. You should receive the new permit shortly.

At the time your letter arrived the whole question of operator permits among other matters was under review by the Commission in connection with its proposed revision of its Schedule of Fees.

The Commission's proposed rule making, just released, proposes to eliminate the fee for permit replacement when the reason for the requested replacement is name-change only.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-74

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of STERLING COMMUNICATIONS, INC. For Construction Permits in the Cable Television Relay Service	CPCAR-407 CPCAR-408 CPCAR-409

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON ABSENT.

1. The captioned applications, filed by Sterling Communications, Incorporated, involve a one channel, three hop microwave communication facility applied for in the Cable Television Relay Service (Part 78 of the Commission's Rules). The three stations applied for would be used by Sterling Communications, Incorporated to relay what is described as a "diversified program service consisting of feature films and sporting events" from an origination point in New York City to an interconnection point with Eastern Microwave, Inc. at Highland Lakes, New Jersey. Sterling Communications already distributes this programming to cable television systems which it owns in New York City and on Long Island. It now proposes to distribute the programming to unaffiliated systems over the facilities applied for and through interconnection with facilities of Eastern Microwave and New York Penn Microwave.

2. A petition to deny these applications has been filed by the National Association of Theatre Owners, Inc. (NATO). NATO is an organization representing motion picture theatre owners throughout the United States. It alleges generally that what Sterling is proposing is the "creation of a massive, multi-state, interconnected CATV pay TV network," that this network will compete with theatres for audience, revenues, and film product, and that this will seriously and adversely affect the economic well being of the motion picture theatres in the area. The result will be the "ruination of the motion picture theatre industry." This in-turn, it is said, will have an adverse affect on America's cities because motion picture theatres provide the magnet that attracts people to the downtown or other areas in which theatres are located. NATO also raises questions as to whether, if this network can outbid motion picture theatres for films, it cannot also outbid "other exhibition outlets with respect to their entertainment forms, such as legitimate theatres, concerts, operas, and sporting events." In light of this, NATO requests that the Commission not act on these applications until it has resolved these issues in its pending proceeding in Docket 19554.[1]

[1] *Notice of Proposed Rule Making Memorandum Opinion and Order in Docket 19554*, 35 FCC 2d 893 (1972).

3. In addition to the opposition to these applications, questions are also raised with respect to them because Sterling Communication proposes service to unaffiliated cable television systems. Section 78.13 of the rules specifies that authorizations in the Cable Television Relay service may only be granted to cable television system operators or to cooperative enterprises wholly owned by cable television system owners or operators. To the extent that this provision of the rules would prevent Sterling Communication from rendering the service proposed, a waiver of the rules is requested. Sterling indicates that the Eastern Microwave, with which its facilities will interconnect, does not consider it feasible to extend its service into New York City because of difficulties involved in finding frequency spectrum for new facilities in the New York City-Northern New Jersey area.

4. Two questions are present by these applications—whether Sterling should be granted a waiver to serve unaffiliated customers using frequencies in the Cable Television Relay Service and whether, in response to NATO's opposition, action should be deferred until the completion of our proceedings in Docket 19554. First, with respect to NATO's opposition, we cannot agree that action on these applications should be further delayed. We have concluded in a long series of decisions that the distribution of non-broadcast programming by cable television systems, subject to appropriate regulation, is in the public interest.[2] We have encouraged system interconnection for distribution of this programming, have authorized the use of microwave radio stations for the relay of non-broadcast programming, and have opposed proposals that would have restricted the interconnection of systems.[3] Our recently adopted rules were designed to encourage the origination and distribution of nonbroadcast programming by cable television system operators and by others. It has been our judgment that, subject to appropriate regulation, the distribution of origination programming, including that for which there is a per channel or per program charge, could significantly increase the quality and diversity of programming available to the American public.

5. NATO's petition provides us no basis on which to conclude that our judgment was wrong or that the rules now in effect should be more restrictive. Although general allegations are made as to how the motion picture theatre industry will suffer from a grant of these applications, no specific facts are adduced as to which theatre in particular will suffer, much less how the public on whose behalf we regulate, would be harmed by a grant of the applications in question. NATO requests rather a stay of processing and decision on these applications until a decision has been reached in Docket 19554 as to what changes, if any, should be made in the existing rules. We see no reason to withold action for this reason. In rendering the service in question Sterling Communications will be doing something that the Commission has actively encouraged and that will have to be fully in compliance with the rules. We have been attempting to expedite completion of our proceeding

[2] See for example *Midwest Television, Inc.*, 13 FCC 2d 478 (1968); *First Report and Order in Docket 18397*, 20 FCC 2d 201 (1969); *Memorandum Opinion and Order in Docket 18397*, 23 FCC 2d 825 (1970). See also *U.S.* v. *Midwest Video Corporation*, ——— U.S. ——— (Case No. 71–506) June 7, 1972.

[3] *Report and Order in Docket 17999*, 20 FCC 2d 422 (1969); *First Report and Order in Docket 18397*, 20 FCC 2d 201, para. 7 (1969).

in Docket 19554 and anticipate that a decision will be reached in that matter without undue delay. Whatever rules result from that proceeding will be fully applicable to the programming distributed by Sterling and the risk of any change in the rules is one which Sterling must bear. NATO asks that we not consider the questions involved on an *ad hoc* basis and we agree, but think the logic of that position requires not that action on these applications be delayed but that we continue to consider the questions raised in Docket 19554. We believe this is an especially appropriate manner in which to proceed when the question is not one as to character, technical, financial or other qualifications of the applicant, nor a question as to the technical sufficiency of the proposal or a possible change in such requirements but a possible limitation on the content of the communication which will be relayed. In such an instance there is a heavy burden that must be met to overcome the presumption in favor of free and open communications.

6. Additionally, we believe this is an appropriate case in which to grant a limited waiver of the rules to the extent that they would otherwise prohibit Sterling from providing service to unaffiliated cable television systems. The Cable Television Relay Service was established for the purpose of aiding cable television systems to obtain program material and the service proposed here is consistent with that objective. And in addition it appears that the absence of reasonably available alternative relay methods weighs heavily in favor of the requested waiver.

7. In so acting, however, we acknowledge that this waiver gives Sterling sole control over a communications link out of the City of New York of a kind that would not necessarily be available to other similar program suppliers. We are concerned that our action not tend to give Sterling a monopoly over service of this type and are, accordingly, taking this action on condition that Sterling accept such time and cost sharing obligations with other cable television system program suppliers as may be necessitated by their inability to obtain facilities such as those here authorized to Sterling Communications. Sterling's failure to respond to reasonable sharing requests, as discussed above, would be grounds for termination of the waiver and consequently the Cable Television Relay Station authorizations.

Accordingly, IT IS ORDERED, That the "Petition to Deny" filed August 16, 1972, by the National Association of Theatre Owners, Inc. IS DENIED.

IT IS FURTHER ORDERED, pursuant to Section 309 of the Communications Act of 1934, as amended, and Section 78.1, *et seq.*, of the Commission's Rules that the above-captioned applications ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1101

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In Re Notice to
LESTER F. SUHLER, CROSS RIVER, N.Y.
To Appear Before the Presiding Officer
in Answer to a Subpena

DECEMBER 6, 1972.

CERTIFIED MAIL

MR. LESTER F. SUHLER,
Jonah's Lane,
Cross River, N.Y.

Re: Cowles Florida Broadcasting, Inc., Docket No. 19168 et al.

DEAR MR. SUHLER: You are hereby informed that pursuant to the ruling of the Presiding Officer in the above-referenced proceeding denying the petition of Lester F. Suhler to quash a subpoena lawfully issued to you, you are HEREBY COMMANDED to appear before the said Presiding Officer at such time and place as he may designate and to testify in the instant proceeding regarding all matters deemed relevant by the Presiding Officer, or to file an appeal from said ruling of the Presiding Officer. Such appeal must be filed with the Review Board within ten days from receipt of this letter in accordance with the procedures prescribed for the filing of such appeals set out in Section 1.301(c) of the Commission's rules, 47 CFR § 1.301(c).

Chairman Burch was absent; Commissioner Reid concurred in the result.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-27

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re SUN VALLEY CABLE COMMUNICATIONS, SUN CITY, A SUBDIVISION OF MARICOPA COUNTY, ARIZ. For Certificate of Compliance	CAC-1128 AZ 040

MEMORANDUM OPINION AND ORDER

(Adopted January 4, 1973; Released January 10, 1973)

BY THE COMMISSION: CHAIRMAN BURCH NOT PARTICIPATING; COMMISSIONER H. REX LEE CONCURRING.

1. On August 28, 1972, Sun Valley Cable Communications filed a "Petition for Special Relief" in which it requests a partial waiver of Section 76.31 of the Commission's Rules, and an "Application for Certificate of Compliance" (CAC-1128) in which it requests authority to operate a 30 channel cable television system at Sun City, a subdivision of Maricopa County, Arizona (which is located in the 43rd television market), on which it proposes to offer approximately 27,400 persons the following television signals: KAET (Educ.), KOOL-TV (CBS), KPAZ-TV (Ind.), KPHO-TV (Ind.), and KTVK-TV (ABC), KTAR-TV (NBC), all Phoenix, Arizona; and KTLA (Ind.), and KTTV (Ind.), both Los Angeles, California. On October 30, 1972, KOOL Radio-Television Inc., licensee of Station KOOL-TV, Phoenix, Arizona, filed a letter opposing Sun Valley's proposal, and Arizona Television Company, Inc., licensee of Station KTVK-TV, Phoenix, Arizona, filed both an "Objection to Certification" and an "Opposition to Petition for Special Relief" directed against Sun Valley.

2. On September 8, 1970, Maricopa County granted Sun Valley non-exclusive authority to use county rights-of-way for the installation of a cable television system, but the County Board of Supervisors does not believe that it has "authority whatsoever to in any way regulate the operations, rates or other business of community antenna television systems within this county." In these circumstances, Sun Valley has filed for special relief pursuant to Section 76.7 of the Rules in an effort to qualify under Par. 116, *Reconsideration of Cable Television Report and Order*, FCC 72-530, 36 FCC 2d 326, 366, which provides for case by case consideration where it is claimed that there is no franchise or other appropriate authorization available for the cable operator to submit in his application for a certificate of compliance. In such cases, the applicant is expected to make an acceptable alternative proposal for assuring that the substance of our rules, and specifically Section 76.31, is complied with. In its "Petition for Special Relief," Sun Valley agrees to operate as follows: as a minimum, it will complete

at least twenty percent of the basic trunk line within the first year, and, thereafter, will equitably and reasonably extend energized trunk cable to a minimum of twenty percent of its franchise area each year and will extend energized trunk cable to new developments within Sun City as homes are built; it will apply for a new certificate of compliance within fifteen years of September 8, 1970; its rates—and any later increases in rates—will be published at least thirty days before they become effective, and will be based upon industry standards and the revenue requirements of the system; it will maintain an office and an agent in Sun City for the purpose of receiving and resolving complaints, and will maintain a record of complaints and the disposition thereof; and it will amend its operations and its commitments to the Commission to conform to any modifications of the Commission's franchise standards within one year of adoption by the Commission or at the time it files an application for a new certificate of compliance, whichever occurs first.

3. In opposing the special relief request, Arizona Television objects to Sun Valley's right-of-way authorization on the grounds: (a) that it does not indicate that Sun Valley's qualifications were approved by the franchising authority as part of a full public proceeding affording due process; (b) that it does not contain a construction time table; (c) that it does not contain a limit on the franchise period; (d) that it does not contain provisions for approving or modifying subscriber rates; and (e) that it makes no provisions for complaints. We rule on these objections as follows: (a) it appears that Sun Valley's' right-of-way was granted only after a public meeting of the Board of Supervisors; that at least one other party has been issued a non-exclusive right-of-way; and that neither Arizona Television nor KOOL[1] affirmatively allege any shortcomings on Sun Valley's part. In these circumstances, we believe there has been substantial compliance with our rules sufficient to justify a grant of a certificate until March 31, 1977. E.g. *CATV of Rockford, Inc.*, FCC 72-1005, —— FCC 2d ——; (b)-(e). These matters were dealt with in Sun Valley's petition, as described in par. 2 above, and we accept the undertakings there set forth as adequate to satisfy our requirements. Compare *LVO Cable of Shreveport-Bossier City*, FCC 72-954, —— FCC 2d ——. Arizona Television makes virtually identical objections to Sun Valley's certification application, and we reject them for the same reasons. It is appropriate to note that this is obviously a difficult area, and one which will require further consideration in our overall proceedings. We believe that we should not "freeze" cable development in localities where a supervising governmental entity is not now present, but rather should examine the applicant and its representations to determine whether on balance permission to proceed would serve the public interest. We have done so here, and find that a grant is appropriate. That grant is made subject to compliance with any further conditions imposed by the Commission during the period until March 31, 1977, which may result (i) from our overall proceedings to deal with this

[1] KOOL's letter objection is basically a quibble regarding the adequacy of the support for the claims that Maricopa County does not believe it can issue a franchise. We consider that the objection was disposed of by a letter dated November 9, 1972, signed by the Chairman of the Board of Supervisors, which confirms Sun Valley's earlier claims.

possible regulatory lacuna, or (ii) from further orders specifically directed to this case in event of facts being brought to our attention warranting action to protect the public interest. In any event, in 1977 we shall have the opportunity to review the matter, and may require special showings in these situations, if there has been no local regulatory change.

In view of the foregoing, the Commission finds that a partial waiver of Section 76.31 of the Rules and grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the letter objection filed October 30, 1972, by KOOL Radio-Television Inc. IS DENIED.

IT IS FURTHER ORDERED, That the "Objection to Certification" and "Opposition to Petition for Special Relief" filed October 30, 1972, by Arizona Television Company, Inc., ARE DENIED.

IT IS FURTHER ORDERED, That the "Petition for Special Relief" and the "Application for Certificate of Compliance" (CAC–1128) filed August 28, 1972, by Sun Valley Cable Communications ARE GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-51

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re TRI-CITIES CABLE CO., INC., LONE STAR, TEX. For Certificate of Compliance	CAC-797 TX245

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. On June 30, 1972, Tri-Cities Cable Company, Inc. filed an application for certificate of compliance for a new cable television system at Lone Star, Texas. The proposed system is to carry the following television signals:

KSLA-TV (CBS) Shreveport, Louisiana
KTBS-TV (ABC) Shreveport, Louisiana
KTAL-TV (NBC) Texarkana, Texas
KLTV (ABC, NBC) Tyler, Texas
KDTV (Ind.) Dallas, Texas
KDFW-TV (CBS) Dallas, Texas
WFAA-TV (ABC) Dallas, Texas
WBAP-TV (NBC), Ft. Forth, Texas
KTVT (Ind.) Ft. Worth, Texas
KERA-TV (Educ.) Dallas, Texas

This application is opposed by KTBS-TV Inc., licensee of Station KTBS-TV and by KSLA-TV, Inc., licensee of Station KSLA-TV, and Tri-Cities has replied.

2. Lone Star is located outside all television markets and accordingly its proposed signal carriage is consistent with Section 76.57 of the Commission's Rules. In their oppositions, KTBS and KSLA argue that Tri-Cities' franchise for Lone Star is inconsistent with Section 76.31 of the Rules in the following respects: (a) it does not state that the franchisee's legal character, financial, technical and other qualifications, and the feasibility of its construction arrangements have been approved by the franchising authority as part of a full public proceeding affording due process, (b) it does not contain a construction timetable, (c) it does not specifically refer to maintaining a local business office to handle complaints, (d) its duration is 25 years, which exceeds the 15 year maximum, (e) the franchise fee of 2% of annual gross receipts within the corporate limits of the city to be served, plus 2% of the annual gross receipts outside of the corporate limits of the city to be served may cumulatively exceed the Commission's suggested 3% franchise fee and as such require a special showing. But no showing has been attempted.

3. We rule on these objections as follows: (a) Tri-Cities has supplied information to establish that the franchise was issued only after a public proceeding, (b) in its application, Tri-Cities has undertaken to comply with the construction schedule of Section 76.31(a)(2) of the Rules, (c) in its application Tri-Cities has undertaken to maintain a local office in compliance with Section 76.31(a)(5) of the Rules, (d) Tri-Cities states that it will return to the city at the end of 15 years for franchise renewal proceedings. We find this offer to be acceptable, and therefore proceed on the understanding that Tri-Cities will voluntarily seek franchise renewal by November 9, 1985, *LVO Cable of Shreveport Bossier City*, FCC 72–954, ——— FCC 2d ———, (e) the discrepancy in the franchise fee is not so great as to bar the franchise (granted November 9, 1970) from being approved as in "substantial compliance" within the meaning of paragraph 115, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 366, see, *CATV of Rockford, Inc.*, FCC 72–1005, ——— FCC 2d ———. In summary, our review of Tri-Cities' franchise for Lone Star persuades us that it is in substantial compliance with our rules and policies sufficient to warrant a grant until March 31, 1977.

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

Accordingly IT IS ORDERED, That the "Opposition to Application for Certification" filed August 21, 1972, by KTBS–TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Opposition to Application for Certification" filed August 21, 1972, by KSLA–TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That Tri-Cities Cable Company, Inc,'s application for Lone Star, Texas (CAC–797) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-52

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re TRI-CITIES CABLE CO., INC., DAINGERFIELD, TEX. For Certificate of Compliance	CAC-796 TX244

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. On June 30, 1972, Tri-Cities Cable Company, Inc. filed an application for certificate of compliance for a new cable television system at Daingerfield, Texas. The proposed system is to carry the following television signals:

KSLA-TV	(CBS)	Shreveport, Louisiana
KTBS-TV	(ABC)	Shreveport, Louisiana
KTAL-TV	(NBC)	Texarkana, Texas
KLTV	(ABC, NBC)	Tyler, Texas
KDTV	(Ind.)	Dallas, Texas
KDFW-TV	(CBS)	Dallas, Texas
WFAA-TV	(ABC)	Dallas, Texas
WBAP-TV	(NBC)	Ft. Worth, Texas
KTVT	(Ind.)	Ft. Worth, Texas
KERA-TV	(Educ.)	Dallas, Texas

This application is opposed by KTBS-TV, Inc., licensee of Station KTBS-TV, and by KSLA-TV, Inc., licensee of Station KSLA-TV, and Tri-Cities has replied.

2. Daingerfield is located outside all television markets and accordingly its proposed signal carriage is consistent with Section 76.57 of the Commission's Rules. In their oppositions KTBS and KSLA argue that Tri-Cities' franchise for Daingerfield is inconsistent with the franchise standards of Section 76.31 of the Rules in the following respects: (a) it does not state that the franchisee's legal character, financial, technical and other qualifications, and the feasibility of its construction arrangements have been approved by the franchising authority as part of a full public proceeding affording due process, (b) it does not contain a construction timetable, (c) it does not specifically refer to maintaining a local business office to handle complaints, (d) its duration is 25 years, which exceeds the 15 year maximum, (e) the franchise fee of 2% of annual gross receipts within the corporate limits of the city to be served plus 2% of the annual gross receipts outside of the corporate limits of the city to be served may cumulatively ex-

ceed the Commission's suggested 3% franchise fee and as such require a special showing. But no showing has been attempted.

3. We rule on these objections as follows: (a) Tri-Cities has supplied information to establish that the franchise was issued only after a public proceeding, (b) in its application, Tri-Cities has undertaken to comply with the construction schedule of Section 76.31(a)(2) of the Rules, (c) in its application, Tri-Cities has undertaken to maintain a local office in compliance with Section 76.31(a)(5) of the Rules, (d) Tri-Cities states that it will return to the city at the end of 15 years for franchise renewal proceedings. We find the offer to be acceptable, and therefore proceed on the understanding that Tri-Cities will voluntarily seek franchise renewal by November 9, 1985 *LVO Cable of Shreveport-Bossier City*, FCC 72-954, ——— FCC 2d ———. (e) The discrepancy in the franchise fee is not so great as to bar the franchise (granted November 9, 1970) from being approved as in "substantial compliance" within the meaning of paragraph 115, *Reconsideration of Cable Television Report and Order*, FCC 72-530, 36FCC2d 326, 366; see, *CATV of Rockford, Inc.*, FCC 72-1005, ——— FCC2d———. In summary, our review of Tri-Cities' franchise for Daingerfield persuades us that it is in substantial compliance with our rules and policies sufficient to warrant a grant until March 31, 1977.

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition To Application For Certification" filed August 21, 1972, by KTBS-TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Opposition To Application For Certification" filed August 21, 1972 by KSLA-TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That Tri-Cities Cable Company, Inc.'s application for Daingerfield, Texas (CAC-796) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R–39

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
OLVIE E. SISK, IVOUS T. SISK AND JOEL E. CAMP, DOING BUSINESS AS TRI COUNTY BROADCASTING COMPANY, EUPORA, MISS.	Docket No. 19026 File No. BP–18016
RALPH MATHIS AND AUBREY FREEMAN, DOING BUSINESS AS RADIO TUPELO, TUPELO, MISS.	Docket No. 19027 File No. BP–18220
For Construction Permits	

ORDER

(Adopted January 19, 1973; Released January 22, 1973)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER ABSENT.

1. The Review Board having under consideration petition for leave to amend to update application pursuant to Section 1.65 of the Rules, filed on December 27, 1972, by Radio Tupelo;

2. IT APPEARING, That no objections to acceptance of the amendments have been filed within the time allowed therefor;

3. IT IS ORDERED, That the above petition for leave to amend IS GRANTED and the amendment therein IS ACCEPTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-54

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re VALLEY CABLEVISION CORP., MARSHALL COUNTY, IND. For Certificate of Compliance	CAC-658 IN073

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. On June 12, 1972, Valley Cablevision Corp. filed an application (CAC-658) for a Certificate of Compliance for a new cable television system to serve an unincorporated area of Marshall County, Indiana.[1] Valley Cablevision requests certification for carriage of the following television signals:

WNDU-TV	(NBC)	South Bend, Indiana
WSBT-TV	(CBS)	South Bend, Indiana
WSJV	(ABC)	Elkhart, Indiana
WTTW-TV	(Educ.)	Chicago, Illinois
WGN-TV	(Ind.)	Chicago, Illinois
WFLD-TV	(Ind.)	Chicago, Illinois
WSNS	(Ind.)	Chicago, Illinois
WCIU-TV	(Ind.—Foreign language and ethnic)	Chicago, Illinois

Advance Brands, Inc., which holds a non-exclusive cable television franchise for the City of Plymouth in Marshall County, Indiana, filed an opposition and two amendments thereto.[2]

2. Advance Brands argues that a grant of the above-captioned application would potentially violate Section 76.501(a) of the Commission's Rules[3] since Valley is equally owned by the licensees of three

[1] Although Valley Cablevision's franchise is for all of Marshall County, it here seeks a certificate of compliance for an area five miles outward in all directions from the city limits of Plymouth, Indiana.

[2] Advance Brands, Inc., also filed a petition for special relief directed against Plymouth CATV Services' application for certificate of compliance (CAC-442) for the City of Plymouth, Indiana (Plymouth CATV Services is a subsidiary of Valley Cablevision Corp.), and filed a motion to consolidate CAC-442 and CAC-658. On October 26, 1972, the Commission granted Plymouth CATV Services' application (CAC-442) and denied the petition for special relief and the motion to consolidate. *Plymouth CATV Services, Inc.*, FCC 72-953, — FCC 2d —.

[3] Section 76.501(a) of the Rules provides that,

"No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in:

(1) A national television network (such as ABC, CBS, or NBC); or

(2) A television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers); or

(3) A television translator station licensed to the community of such system.

television broadcast stations which place predicted contours over Plymouth;[4] that the cross-interest here involved apparently was in existence prior to July 1, 1970, and hence need not be disposed of before August 10, 1973; that a grant of the application will either allow a later sale of the certificate at a higher price—thus allowing a form of trafficking in franchises—or furnish the basis for a waiver of Section 76.501 of the Rules which is not otherwise warranted; and that the application should therefore be denied.

3. As we stated in *Plymouth CATV Services, Inc.*, FCC 72-953, ——— FCC 2d ———, "we have never delayed system operation simply because of eventual need to comply with the cross-ownership rules." Valley has several options by which it might meet the requirements of Section 76.501 of the Rules. We will not withhold certification solely on the basis of an argument that the applicant might choose to sell the cable system to comply with our rules. No request for waiver of Section 76.501 is before us so it seems premature to anticipate its disposition.

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the application for certificate of compliance (CAC-658) filed June 12, 1972, by Valley Cablevision Corp., IS GRANTED.

IT IS FURTHER ORDERED, That the "Opposition to Application for Certificate of Compliance" filed August 7, 1972, by Advance Brands, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[4] Michiana Telecasting Corp., licensee of Station WNDU-TV, South Bend, Indiana; South Bend Tribune, licensee of Station WSBT-TV, South Bend, Indiana; and Truth Publishing Co., licensee of Station WSJV, Elkhart, Indiana.

F.C.C. 73-20

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
WGBH EDUCATIONAL FOUNDATION, SPRINGFIELD, MASS.
For Waiver of Section 74.631(d) of Commission Rules

JANUARY 4, 1973.

WGBH EDUCATIONAL FOUNDATION,
Television Station WGBY-TV,
One Armory Square,
Springfield, Mass.

GENTLEMEN: This refers to your request of November 13, 1972, for a waiver of section 74.631(d), subpart F, part 74 of the Commission's rules concerning the multiplexing of additional educational aural program material of WGBH-FM, Boston, Massachusetts, for delivery to WFCR-FM, University of Massachusetts, Amherst, Massachusetts, via an existing television intercity relay system licensed for use for television station WGBY-TV, Springfield, Massachusetts.

The Commission has concluded that a grant of your waiver request would be warranted, provided that the operation of your television intercity relay stations WII-65, WII-66, and WII-67 be conducted in accordance with the following condition:

In no event shall television intercity relay stations WII-65, WII-66 and WII-67 be operated solely for the purpose of relaying the signals of WGBH-FM, Boston, Massachusetts, to station WFCR-FM, University of Massachusetts, Amherst, Massachusetts.

Accordingly, your request for a waiver of section 74.631(d) is hereby granted, subject to the condition that the intercity relay stations aforementioned be operated in the manner set forth above. A copy of this letter must be posted with the authorizations of these television intercity relay stations.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1002

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WKBN BROADCASTING CORP. For Renewal of Licenses for Stations WKBN, WKBN-FM and WKBN-TV, Youngstown, Ohio	File Nos. BR-306, BRH-580 and BRCT-229

MEMORANDUM OPINION AND ORDER

(Adopted November 8, 1972; Released November 15, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING. COMMISSIONER REID CONCURRING IN THE RESULT. COMMISSIONER HOOKS CONCURRING IN PART AND DISSENTING IN PART AND ISSUING A STATEMENT.

1. The Commission has before it for consideration: (i) a petition for reconsideration, filed August 30, 1971, by the Black Broadcasting Coalition of Youngstown, Ohio; (ii) an opposition to the petition for reconsideration, filed September 27, 1971, by WKBN Broadcasting Corporation; and, (iii) the Black Broadcasting Coalition's October 22, 1971, reply to WKBN Broadcasting Corporation's opposition pleading.

2. To place the instant petition in proper perspective, a brief statement concerning the background of this proceeding will be helpful. As noted in the caption above, WKBN Broadcasting Corporation, hereinafter WKBN, is the licensee of WKBN, WKBN-FM and WKBN-TV, all of which are located in Youngstown, Ohio. On July 6, 1970, WKBN timely filed applications for renewal of its licenses for WKBN, WKBN-FM and WKBN-TV (File Nos., BR-306, BRH-580 and BRCT-229, respectively). On August 27, 1970, the Commission granted the Black Broadcasting Coalition of Youngstown, hereinafter the BBC, a 45-day extension of the September 1, 1970, cut-off date for filing petitions to deny WKBN's license renewal applications. See 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.580(i). This action was taken because the BBC and WKBN were engaged in discussions in an attempt to resolve the BBC's questions at the local community level. However, when discussion failed to culminate in an acceptable agreement, the BBC, on October 1, 1970, filed separate petitions to deny WKBN's aforementioned license renewal applications for WKBN, WKBN-FM and WKBN-TV.

3. In its petitions to deny the BBC raised substantially similar allegations against each station. Briefly, these allegations concerned WKBN's community survey, past and proposed programming, and employment practices. WKBN responded to the BBC's charges in an

opposition pleading filed October 14, 1970, and the BBC filed a reply to WKBN's opposition pleading on November 4, 1970.

4. After full consideration of the BBC's petitions to deny and reply pleading, WKBN's opposition pleading, and the license renewal applications for WKBN, WKBN–FM and WKBN–TV, the Commission, by Memorandum Opinion and Order adopted July 23, 1971, released July 30, 1971, found that the BBC had failed to raise any substantial and material question of fact which would warrant designating WKBN's license renewal applications for hearing. Thus, the BBC's petitions to deny were denied and the license renewal applications for WKBN–FM and WKBN–TV were granted; the license renewal application for WKBN–AM remained on deferred status for other reasons. See *WKBN Broadcasting Corp.*, 30 FCC 2d 958 (1971). Then, on August 30, 1971, the BBC timely filed the instant petition seeking reconsideration of the Commission's initial decision.

5. BBC, in its petition for reconsideration, request the Commission to set aside its grant of WKBN's license renewal applications and, thereafter, designate the renewal applications for WKBN–AM–FM–TV for evidentiary hearing. In support of its request, BBC contends that the petition to deny and the Commission's decision evidence the existence of a number of disputed issues of fact concerning WKBN's community survey, past and proposed programming, commercial practices, employment practices, public service announcements, community calendar announcements, the size of Youngstown's Spanish-surnamed population, and the discontinuance of WKBN–FM's CBS affiliation agreement. BBC asserts that these disputed issues of fact cannot be resolved until an evidentiary hearing is held on WKBN's license renewal applications. BBC argues, however, that the Commission's decision appears to be based on a presumption of WKBN's adequacy of performance and a requirement that this presumption be overcome by an overwhelming factual showing. BBC continues that this position gives no weight whatsoever to the views of minority groups or to the views of the community as a whole and, further, that the posture adopted by the Commission in its opinion is strikingly similar to the "curious-neutrality-in-favor-of-the-licensee" for which the Court of Appeals for the District of Columbia reversed the Commission in *Office of Communication of the United Church of Christ* v. *FCC*, 425 F. 2d 543, 547 (1969).

6. The BBC also invokes the concept of summary judgment as discussed in the Commission's Notice of Proposed Rule-Making in Docket No. 19141, 27 FCC 2d 426. BBC argues, in this respect, that it could not provide in its petition to deny and reply pleadings the detailed evidence which it would be able to furnish at a hearing, that a major reason for this is the difficulty in obtaining evidence concerning a licensee's past practices at the pleading stage, and, therefore, that the Commission should allow great latitude for general allegations in petitions to deny. BBC continues that, once ". . . general allegations of undisputed materiality have been raised by a petition to deny . . .," the Commission should not resolve the issues ". . . at least until and unless discovery procedures are made available . . . to enable . . . [a petitioner] to make more specific those general allegations of fact.

7. In conclusion, BBC states that the Commission erred insofar as the conclusions set forth in paragraphs 35–41, inclusive, and paragraphs 43–45, inclusive, of its *Memorandum Opinion and Order*, *supra*, are concerned; and, further, that the Commission's decision is deficient since it does not make the statutory finding that the public interest, convenience and necessity will be served by renewal of WKBN's license renewal applications.

8. WKBN, in its opposition, submits that the Commission's initial decision should be affirmed and that the BBC's petition for reconsideration should be denied. In short, WKBN contends that the Commission properly found that the BBC had failed to establish with the degree of specificity required by Section 309(d)(1) of the Communications Act of 1934, as amended, that substantial and material questions of fact exists which require an evidentiary hearing on WKBN's license renewal applications. As to BBC's position that the Commission should allow for general allegations so as to permit the use of discovery procedures, WKBN notes that a broadcast licensee must maintain locally for public inspection a copy of the renewal application along with related pleadings and correspondence (47 C.F.R. 1.526). WKBN also notes that a licensee is required to publish and broadcast a notice announcing the filing of the renewal application and information as to when and where comments may be made by the public. WKBN notes further that, ". . . any interested party can undertake an air check on a station's programming to ascertain its nature and responsiveness to local needs." WKBN contends, therefore, that ". . . an interested local citizen group has available sufficient information to prepare a meaningful petition to deny which is fully supported by material evidence concerning the licensee's efforts to operate in the public interest" (Opposition, p. 19). WKBN concludes that the petitioner's failure to raise a substantial and material question of fact was caused not by a lack of information but, rather, by ". . . the overwhelming evidence of record . . ." which supports a finding that the licensee operates the stations in the public interest.

9. Finally, WKBN observes that the *Notice of Proposed Rule-Making* which is cited by the BBC is directed to providing the means for summary judgment following discovery procedures *only* ". . . on the basis of evidentiary materials obtained *after the case is designated for hearing*". The licensee concludes by arguing that any question of pre-designation discovery procedures would be more appropriately raised in a rule-making proceeding rather than in this proceeding.

10. BBC, in reply, concedes that the Commission can deny petitions to deny without a hearing where the petitioners have failed to raise a substantial and material question of fact. The BBC asserts, however, that the two cases cited by WKBN (*Miner's Broadcasting Service, Inc.*, 20 FCC 2d 1061 (1970), and *Gulf Television Corporation*, 22 RR 2d 978 (1971) are inapposite. BBC argues that, *contra* to the facts in those cases, its petitions contained material allegations of fact which were challenged by the licensee for ". . . lack of specificity and supporting detail." Citing *Office of Communication of the United Church of Christ* v. *FCC*, 359 F 2d 994 (D. C. Cir., 1966), the petitioners argue that "[t]he Commission should welcome petitioners seeking hearings,

particularly those representing significant community interest groups and acting on behalf of the public."

11. Referring again to the Notice of Proposed Rule-Making in Docket No. 19141, BBC contends that a distinction must be drawn to reflect the apparent difference between a pre-designation finding of "no material and substantial question of fact" and an identical post-designation finding which could be made after discovery should the proposed summary decision rules be adopted. In reviewing the Commission's authority to deny a petition to deny without benefit of a hearing in light of the proposed rules, the petitioner concludes that ". . . a lesser degree of specificity is required to obtain a hearing than is required to resist a motion for summary judgment after discovery has been permitted." BBC avers that it has met the minimum requirements by ". . . alleg[ing] misconduct and presenting some evidence to support these charges" and that now the FCC must fulfill its ". . . affirmative duty to assist in the development of a meaningful record which can serve as the basis for the evaluation of the licensee's performance of his duty to serve the public interest" (*Office of Communication of the United Church of Christ* v. *FCC*, 425 F. 2d 543, 548) Reply p. 6). In this regard, the BBC states that "[t]he law is unyielding on the affirmative obligation of Federal administrative agencies to maximize public participation in their proceedings." Because of the importance of issues and the public interest viewpoint presented by its petitions to deny, BBC contends that the Commission can only act ". . . after a hearing is ordered, when the full panoply of discovery, examination and cross-examination is available . . . ." The Commission should not, argues BBC, frustrate public interest groups by subjecting their petitions to ". . . an excessively strict interpretation [which] frustrates the participation of listeners by erecting bureaucratic barriers."

CONCLUSIONS

12. Initially, we are prompted by BBC's argument, as presented in the pleadings before us, to review the standards and procedures which govern Commission action on renewal applications. Our Congressional mandate requires that petitioners adhere to certain pleading requirements before it becomes necessary to designate an application for hearing. Section 309(d)(1) of the Communications Act of 1934, as amended, provides for grants without hearing where the Commission finds that, after consideration of the application and all relevant pleadings, there are no substantial and material questions of fact and that a grant of the application will serve the public interest. The statute also provides that, where a petition to deny is filed, it must ". . . contain specific allegations of fact sufficient to show . . . that a grant of the application would be prima facie inconsistent . . ." with the public interest. Should the petitioner fail to make this showing, the Commission may dispose of the petition by a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition, 47 U.S.C. § 309(d)(2).

13. We first address ourselves to BBC's contention that the Commission should allow great latitude for general allegations in petitions to deny. Section 309(d) of the Act forecloses our consideration of such

a suggestion. It is well established that the allegation of ultimate, conclusionary facts or mere general allegations on information and belief, supported by general affidavits, are insufficient to require an evidentiary hearing. *Chuck Stone* v. *Federal Communications Commission*, D.C. Cir. Case No. 71-1166, June 30, 1972, *rehearing denied* September 1, 1972; *Hartford Communications Committee, et al.* v. *Federal Communications Commission*, D.C. Cir. Case No. 72-1171, August 14, 1972; S. Rept. No. 690, 86th Cong., 2d Sess., p. 12 (1960). The Commission, of course, is aware of the concern being expressed by minority groups about the responsiveness of the broadcast media to their local problems. For this reason we have consistently encouraged community-broadcaster discussions throughout the license term as the best and most effective method of resolving local problems and improving local service. However, if members of the public choose to wait until the end of a license term and then petition to deny renewal, they must meet the strict pleading requirements of Section 309(d). The Commission, in evaluating such a petition, cannot and will not ignore or waive Section 309(d) standards to accommodate petitioners in their efforts.

14. Further, we are persuaded that community groups can without discovery procedures make specific allegations of fact concerning a broadcaster's performance. Clearly, any interested party can monitor a station's performance to ascertain the nature of his responsiveness to community needs. In the context of the present proceeding, however, it appears that the BBC has not undertaken this step to evaluate WKBN's overall performance. There is no evidence from any monitored week, nor is there a long history of complaints of failure to serve local community problems, including minority problems. There are no facts which imply the existence of a policy of illegal racial discrimination or a history of programming misconduct. Instead, it appears that the BBC has merely relied upon information contained in WKBN's license renewal applications and responsive pleadings in an effort to substantiate its allegations. As a result, petitioner's allegations were either lacking the requisite specificity or otherwise failed to raise a substantial or material question of fact. A hearing, of course, is not required to resolve issues which the Commission finds are either not substantial or material regardless of whether the facts involved are in dispute. Nor is a hearing necessary where the facts required to resolve a question are not disputed and the disposition of a petitioner's claim turns not on determination of facts but inferences to be drawn from facts already known and the legal conclusions to be drawn from those facts, *Chuck Stone* v. *Federal Communications Commission*, *supra*.

15. With the exception of the matters discussed above, BBC has failed to offer any new facts to support its contention that there exist substantial and material questions of fact which require designation of WKBN's license renewal applications for hearing. Instead, BBC merely expresses the opinion that the Commission erred in each of its earlier conclusions regarding WKBN's community survey, past and proposed programming, the size of Youngstown's Spanish speaking population, commercial practices, employment practices, public service

announcements, community calendar announcements, and the discontinuance of WKBN-FM's CBS affiliation agreement.

16. We need not, of course, consider again matters which have already been presented, considered, and disposed of. *The Spartan Broadcasting Co.*, 22 FCC 2d 920 (1970). Nevertheless, we have reviewed our initial *Memorandum Opinion and Order*, *supra*, in light of BBC's petition for reconsideration, to determine whether we erred in reaching our determination that the BBC had failed to raise any substantial and material question of fact which would warrant designating WKBN's license renewal applications for hearing. Based on that review, we find no reason to disaffirm our earlier decision; and, therefore, the BBC petition will be denied.

17. Accordingly, IT IS ORDERED, That the petition for reconsideration filed herein by the Black Broadcasting Coalition of Youngstown, Ohio, IS DENIED, and that the Commission's action of July 23, 1971, released July 30, 1971, granting the above-captioned applications for Stations WKBN-FM and WKBN-TV IS REAFFIRMED as being in the public interest, convenience and necessity; the renewal application for WKBN-AM will remain on deferred status for other reasons.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS CONCURRING IN PART; DISSENTING IN PART

In Re: Renewal Proceedings in Youngstown and Columbus, Ohio.

I concur with the majority on these cases insofar as its holding that the petitions to deny filed by the respective community groups do not attain—or candidly, even proximately attain—the procedural standard of specificity mandated by the Communications Act.[1] It is a hackneyed, but nonetheless true, legal bromide that bad cases make bad law. Vague invective and wide-brush critique in a legal pleading requiring factual precision provide the (justifiably) ideal juridical basis for dismissal. Interested parties must dig deep, make the effort to pinpoint and factually support the exact abuses of which they complain so as to render summary rejection, with attendant loss of credibility, illegal if not impossible.

My point of departure and dissent from my colleagues stems from the fact that the perceived deficiencies in the petitioners' pleadings eliminates only inadequate petitioners from the renewal byplay—it in no way eliminates the Commission itself. As the principal monitors of broadcaster performance, we have the main statutory duty to investigate licensee activities; especially when confronted with earnest

[1] Specifically, 47 U.S.C. § 309(d)(1). It must be conceded that Congress intended a strict standard when amending the statute to permit petitions to deny. Congress expected:

". . . a substantially stronger showing of a greater probative value is necessary now in the case of a post grant protest. The allegations of ultimate, conclusionary facts or mere general affidavits . . . are not sufficient." S. Report No. 690, 86th Cong., 1st Session, p. 3 (1959).

See *Stone* v. *F.C.C.*, Case No. 71-1166 (D.C. Cir. June 30, 1972). But see, *Marine Space Enclosures, Inc.* v. *FMC*, 137 U.S. App. D.C. 9, 18 (Note 22) (1969) where the court observed that "[P]rocedural requirements depend in part on the importance of the issues before the agency."

complaints from the neighbors. The Commission frequently acts on its own volition in withholding renewals when it suspects delinquencies. It should not stand behind a procedural barrier on the apparent side of a licensee and let the matter ride simply because a complainant is without the assiduity, resources or legal acumen to mount a perfect attack.[2] Rather, the Commission should be on all sides looking critically in; not at the quality of the complainants' performance—we do not license complainants—but at the activities of the station.[3]

Accordingly, while I don't believe the Commission's action here is wholly unwarranted, it certainly could have gone further in fulfilling its own statutory function in these cases.

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[2] That the Commission need not depend solely on the procedural sufficiency of denial petitions in determining the propriety of license renewal is clearly enunciated in 47 U.S.C. § 307. In pertinent parts, that Section provides that the Commission "may officially notice" (§ 307(d)(2)) facts and circumstances and if the Commission is "for any reason unable to make the [public interest, convenience and necessity] findings specified . . . it shall formally designate the application for hearing on the ground or reason then obtaining". It is axiomatic that before the Commission can find "any reason" it must first look.

[3] For an astringent reminder of the Commission's appropriate role in these renewal triangles, see Judge Burger's opinion in *Office of Communications of the United Church of Christ* v. *F.C.C.*, 138 U.S. App. D.C. 11, 425 F. 2d 543 (1969).

F.C.C. 73R-51

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ALABAMA EDUCATIONAL TELEVISION COMMISSION, MONTGOMERY, ALA. ET AL. For Renewal of Licenses and for License to Cover Construction Permit	Dockets Nos. 19422-19430 Files Nos. BRET-69, BRET-5, BRET-7, BRET-14, BRET-87, BRET-130, BRET-147, BRET-109, BLET-267

ORDER

(Adopted January 26, 1973; Released January 31, 1973)

BY THE REVIEW BOARD:

1. Before the Review Board is the application for review (appeal from ruling of Presiding Judge), filed on November 17, 1972, by Linda Edwards, Eugene Farrell and Steve Suitts, and responsive pleadings;
2. IT APPEARING, That, as petitioner recognizes, said appeal is prohibited by the Commission's Rules (Section 1.301(b)), and is premature absent a waiver of said Rules; and
3. IT FURTHER APPEARING, That petitioner has not informed the Review Board that such a waiver has been obtained;
4. IT IS ORDERED, That the above application for review IS DISMISSED without prejudice to refiling if a proper waiver is obtained.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-114

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 0, 1, 81, 87, 89, 91 AND 93 OF THE COMMISSION'S RULES RELATING TO THE TIME IN WHICH APPLICATIONS, AND AMENDMENTS THERETO, OR PETITIONS TO DENY APPLICATIONS, MAY BE FILED IN THE SAFETY AND SPECIAL RADIO SERVICES	Docket No. 19484

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 5, 1973)

BY THE COMMISSION:

1. We have under consideration a timely filed Petition for Reconsideration by Aeronautical Radio, Inc. (ARINC) of our Report and Order in this Docket released July 11, 1972. ARINC asserts that our processing and public notice procedures for Aviation Service applications requiring public notice pursuant to Section 309(b) of the Communications Act do not meet those statutory requirements.

2. Specifically, ARINC's petition is directed to applications that are returned to an applicant for minor amendment and are then resubmitted. Under current rules, no further public notice would be required. It asserts that this procedure may in some instances, deprive a person of a reasonable opportunity to file a petition to deny an application. ARINC's position is that when an application is returned to an applicant, it is not "on file" during the period the application is not physically in the Commission's files and cannot be examined by a member of the public for purposes of determining whether to file a petition to deny. ARINC further argues that if the application is then resubmitted to the Commission shortly before the expiration of the 30 days public notice period, an interested party would not ordinarily know that it has been resubmitted and even if the resubmission is known, insufficient time may remain in the 30 day public notice period for the party to examine the application and file a timely petition to deny within 30 days after public notice specified in the new Section 1.962(g) of the rules. ARINC asserts that the Common Carrier and Broadcast Bureaus place on public notice all applications that have been returned to an applicant, and also all applications resubmitted to the Commission regardless of the degree to which the applications have been modified; i.e., substantial or minor modification. ARINC's position is that the Safety and Special Radio Services Bureau could follow this procedure without any unreasonable administrative burden, and that the Bureau should do so.

3. We agree in substance with ARINC and we will grant it the requested relief by amending Section 1.962(e) of the rules to provide that all applications subject to that section, that have been returned to an applicant and resubmitted to the Commission will be placed on public notice when returned to an applicant and on a new public notice upon being resubmitted to the Commission.

4. Accordingly, the Petition for Reconsideration of ARINC filed August 10, 1972, IS GRANTED to the extent indicated herein.

5. IT IS ORDERED, That pursuant to the authority contained in Section 4(i), 303(r) and 309(d)(1) of the Communications Act of 1934, as amended, Part 1 of the Commission's rules IS AMENDED, effective March 16, 1973, as set forth in the attached Appendix.

6. IT IS FURTHER ORDERED, That the proceeding in Docket 19484 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Section 1.962(e) of the rules is amended as follows:

§ 1.962 *Public Notice of acceptance for filing; petitions to deny applications of specified categories.*

* * * * * * *

(e) The Commission will issue at regular intervals a "Public Notice" listing all applications subject to this section which have been accepted for filing, or have been returned to an applicant for correction, within the 30 day public notice period. Such "Public Notice" will re-list any application which has been amended substantially since its previous listing, or which has been resubmitted to the Commission, after public notice of the return of the application to an applicant, pursuant to Section 1.959 of the rules. For the purposes of this section, "accepted for filing" means that an application has been received at the Commission with the required filing fee, if any. Such acceptance for filing shall not preclude the subsequent dismissal of an application, pursuant to the provisions of this chapter, as being defective.

F.C.C. 72-1147

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
PETITIONS FOR AN EXTENSION OF TIME FOR INITIAL COMPLIANCE WITH SECTION 76.601 OF THE RULES

MEMORANDUM OPINION AND ORDER

(Adopted December 13, 1972; Released December 18, 1972)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE CONCURRING IN THE RESULT.

1. Section 76.601(c) of the Commission's Rules requires the operator of each cable television system to conduct complete performance tests of that system at least once each calendar year (at intervals not to exceed 14 months). The performance tests are intended to determine the extent to which the system complies with all the technical standards set forth in Section 76.605 of the Rules. Section 76.601(c) became effective on March 31, 1972 and, therefore, the first performance tests are required to be conducted by December 31, 1972.

2. On September 22, 1972, the National Cable Television Association (NCTA) filed a petition requesting that the compliance date be postponed until December 31, 1973. NCTA explained that there is much uncertainty within the industry concerning the appropriate methodology for performing the tests, a present scarcity of appropriate testing equipment, and too few qualified engineering consultants to conduct the performance tests. NCTA further noted that for smaller systems the testing program has represented a particularly burdensome expense.

3. By Public Notice of October 16, 1972, interested parties were requested to comment on this matter to provide the Commission further insight into the problems resulting from the performance test requirement of Section 76.601(c) and on the advisability of postponing for some period the date for compliance. We received comments (many of which requested an extension of the deadline) representing a substantial portion of the cable television industry, two engineering consulting firms, and the Association of Maximum Service Telecasters (AMST).

4. Based on the information we have received, there is little doubt that the necessity of complying with Section 76.601(c) is causing many problems throughout the cable television industry. It was expected that some difficulty would inevitably result from our new rules. But as

AMST has noted, cable systems have been on notice for more than a year that they would have to conduct performance tests and industry efforts to prepare for compliance very possibly could have been more strenuous. The fact is, however, that the industry on the whole cannot meet the requirements of Section 76.601(c) by the end of this year. Clearly, some further amount of time is needed for dissemination of testing techniques, acquisition of equipment, and training of engineers. We expect that when these problems are addressed, cable operators will discover that the testing requirement need not be quite as burdensome and expensive as they believe it to be. It is noted that systems that were in operation before March 31, 1972 do not have to comply with the technical standards of Section 76.605 until 1977; however, systems that began operation after March 31, 1972 are required to comply with Section 76.605 upon commencement of service. We shall, therefore, postpone the deadline for complying with the performance tests requirement of Section 76.601(c) for one year, until December 31, 1973, for cable systems that were operative by March 31, 1972.

Accordingly, IT IS ORDERED, That the final date for initial compliance with the cable television performance tests of Section 76.601(c) is POSTPONED until December 31, 1973, for all cable systems that were in operation on March 31, 1972. Other provisions of Section 76.601 shall remain in effect.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-100

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF CHANNEL 13 OF LAS VEGAS, INC. LICENSEE OF STATION KSHO-TV, LAS VEGAS, NEV.
For a Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 30, 1973)

BY THE COMMISSION:

1. In *Channel 13 of Las Vegas, Inc.*, 37 FCC 2d 518, 25 RR 2d 296 (1972), we ordered Channel 13 of Las Vegas, Inc. (KSHO-TV), licensee of Station KSHO-TV, to forfeit $10,000 for violations of Section 317 of the Communications Act and of Sections 73.654 and 73.1205 of our Rules. Now under consideration is KSHO-TV's application for mitigation or remission of the forfeiture, filed October 24, 1972.

2. The basis for the forfeiture can be briefly stated. KSHO-TV is an affiliate of the ABC television network. The station did not broadcast all of the material provided by the network and often joined network programs late, expanded commercial breaks, or left the network program before its conclusion. In many instances, the material deleted at the end of the program included the statements or "crawls" that disclose the receipt of payment for the use of promotion of merchandise or services on the program.[1] Accordingly, KSHO-TV was cited for violating Section 317 of the Communications Act and Section 73.654 of our rules as to sponsor identification. KSHO-TV's contract with the network obligated the station to broadcast network sponsored programs "without interruption or deletion or addition of any kind," unless otherwise noted in the statement sent to the network. KSHO-TV nevertheless certified to the network that the programs were broadcast in their entirety. Since the "crawls" clipped at the end of the program are classified as advertising, KSHO-TV was also cited for violating Section 73.1205 of the Rules.

3. In its application for mitigation or remission, KSHO-TV restates its contention that Section 73.1205 of our Rules does not apply to its conduct. For the reasons set out in our prior decision, we believe that clipping network programming, while certifying to the network that the programming was carried in its entirety, violates Section 73.1205 when the clipped portions contain advertising. KSHO-TV also reasserts that it lacked adequate notice that its conduct would violate Section 73.1205. We repeat that the ruling that "crawls" constitute commercial matter was made on December 16, 1970, which falls before

[1] A description of such "crawls" and pertinent Commission decisions pertaining to them are set out in our prior decision in this matter, cited above.

the dates set out in the Notice.[2] KSHO–TV had constructive notice at that point. While KSHO–TV may not have had actual notice, or may not have thought through the ramifications of the ruling, we hold licensees to a high degree of responsibility as to the requirements of our rules and our interpretations of them.

4. KSHO–TV asserts that we have not established that the clipped material was required for purposes of sponsor identification. If an equivalent identification was made during the course of the program, KSHO–TV argues that the identification in the "crawl" at the end of the program was not required. As noted in our prior decision, in reaching the conclusion that the announcements were required for sponsor identification purposes, we relied on the statement of ABC that on those days indicated where KSHO–TV had clipped the entire "crawl" that, as to specified prizes, ". . . the announcement that a fee had been paid in addition to the donation of the prize itself was made solely at the end of the program in the disclosure announcement. No disclosure occurred during the body of the program . . ." It is KSHO–TV's position that since we have not examined the scripts or tapes of the programs in question, we cannot conclude that the necessary sponsor identification was not presented in the body of the program. Moreover, KSHO–TV contends that this "deficiency" violates Section 503 of the Communications Act.[3] [4]

5. We can agree with KSHO–TV that it would be preferable if we had video tapes or films of the particular programs in our possession for review. But the lack of one kind of evidence to establish a violation does not mean that all other evidence must be ignored. Here we have KSHO–TV's concession that it clipped the network material set out in our Notice of Apparent Liability. On ten of the days cited, KSHO–TV clipped the entire sponsor identification "crawl." ABC has stated as to specified products used on the programs that no sponsor identification was broadcast during the body of the particular crawl, only during the "crawl." We believe that this is strong, clear evidence of failure to give sponsor identification, and meets the requirements of Section 503 of the Act.

6. KSHO-TV also states that on the basis of the information contained in the Notice of Apparent Liability and in our prior decision, it is unable to determine whether the *proviso* clause of Section 317 of

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[2] As noted in our prior decision, we have previously imposed forfeitures under Section 73.1205 for issuing false certificates to networks. See *Letter to Wake County Broadcasting Company (WAKS)*, FCC 70–780 (July 15, 1970); *Letter to Chapman Television of Tuscaloosa, Inc. (WCFT–TV)*, FCC 70–1197 (November 4, 1970). It cannot be said, therefore, that our action here in applying Section 73.1205 to certifications issued to networks by a station is arbitrary. *Radiozark Broadcasting of Louisiana*, 32 FCC 2d 603 (November 29, 1971), cited in our prior decision, also applies Section 73.1205 to certifications to networks, but, as noted by KSHO–TV, was issued after the events considered here.

[3] Section 503(b)(2) provides in part:

"A notice issued under this paragraph shall not be valid unless it sets forth the date, facts, and nature of the act or omission with which the licensee or permittee is charged and specifically identifies the particular provision or provisions of the law, rule, or regulation or the license, permit, or cease and desist order involved."

[4] KSHO–TV also states that it has never seen the letter from ABC that contains the statement relied upon. Since the letter was excerpted in our previous decision, we see no prejudice to KSHO–TV. In any event, the staff of the Complaints and Compliance Division, where such matters are processed, recalls no request to inspect the letter. A copy of the letter is in the station's complaint file, which is available for public inspection at the Commission upon request.

the Act is applicable.[5] Since the companies in question that provided prizes used on the cited quiz shows paid to have their products used, the situation falls clearly within the first clause of Section 317(a)(1). The *proviso* clause is applicable only in situations where services or merchandise are provided free to the station, or where the *station* pays a nominal charge for them.

7. KSHO–TV asserts that its conduct was not willful within the meaning of Section 503(b) of the Act. However, KSHO–TV knew that it was not carrying the entire network sponsored programs. Nonetheless, it certified that the programs were carried in full.[6] It is not necessary to show that it knew that its conduct violated any rule or statute in order to show willfulness. See *Didrickson* v. *FCC*, 254 F.2d 354 (1958), and the cases cited there. In our view, KSHO–TV's conduct was willful within the meaning of Section 503(b) of the Act.

8. Finally, KSHO–TV argues that the amount of the forfeiture is disproportionate in reference to subsequent forfeitures imposed against other stations for network clipping. KSHO–TV notes that we imposed a $4,000 forfeiture against Station KLAS–TV, FCC 72–697 (July 26, 1972) and a $5,000 forfeiture against Station KFSA–TV, FCC 72–502 (June 9, 1972). KSHO–TV concludes that the $10,000 forfeiture assessed against it is arbitrary and capricious. However, Section 503(b)(1) of the Act limits the amount of forfeiture to $1,000 for each day during which a violation occurs and Section 503(b)(3) limits the amount to a total of $10,000, and states that no forfeiture liability shall attach for any violation more than one year prior to the issuance of the notice of apparent liability. Both KLAS–TV and KFSA–TV were fined the maximum amount permissible under the statute for violations occurring within the statute of limitations. The difference in the amount of the forfeiture flows solely from the limitations set out in the statute, not from arbitrary or capricious actions on our part.

9. In view of the above, we are not persuaded to mitigate or remit the forfeiture.

10. Accordingly, IT IS ORDERED, That the application for mitigation or remission of forfeiture filed October 24, 1972, by Channel 13 of Las Vegas, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[5] Section 317(a)(1) states:
"All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That 'service or other valuable consideration' shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast."

[6] The certifications to the network stated:
"Everything carried according to schedule except as noted in the interruption, deletions, cancellation or preemption column above. In the event any of the programs were not carried in their entirety for any reason not stated herein, payment to the station for such program or programs shall be waived."
For the programs noted in the Notice of Apparent Liability, KSHO–TV did not indicate any "interruption, deletions, cancellation or preemption" in the appropriate column in its certifications to the network.

F.C.C. 73–132

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of ESTABLISHMENT OF RULES PERTAINING TO THE AUTHORIZATION OF NEW OR REVISED CLASSIFICATIONS OF COMMUNICATIONS ON INTERSTATE OR FOREIGN COMMON CARRIER FACILITIES AND AMENDMENT OF PART 63.60–63.90 OF THE RULES	Docket No. 19117
In the Matter of the Application of AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. For Authority Under Section 214(a) of the Communications Act of 1934, as Amended, To Supplement Existing Facilities Between Various Locations Throughout the Continental United States and to Canada and Mexico To Be Undertaken During 1971 and 1972.	File No. P–C–7825
In the Matter of the Application of PIONEER-UNITED TELEPHONE CO. For Certification, Under Section 214(a) of the Communications Act of 1934, as Amended, of the Construction and Operation of Proposed Wide-Band Telecommunications Facilities in the Community of Jonathan, Near Chaska, Minn.	File No. P–C–7954

REPORT AND ORDER

(Adopted January 31, 1973; Released February 5, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS DISSENTING; COMMISSIONER REID NOT PARTICIPATING.

1. As set forth in the Notice of Proposed Rule Making released on January 14, 1971 (27 FCC 2d 36; 36 Fed. Reg. 1064), the rule making proceeding herein in Docket No. 19117 had its origin in certain conditions placed in the above captioned Section 214 P–C–7825 and P–C–7954 authorizations granted to American Telephone and Telegraph Co. (AT&T) and Pioneer-United Telephone Company (Pioneer), respectively.

2. The first such condition was imposed on September 4, 1970, when the Commission issued an Order and Authorization (FCC 70–955)

granting an application by AT&T (File No. P–C–7825) with the following proviso:

That the facilities authorized herein shall be used only for the provision of existing services and no new classification or subclassification of service shall be instituted on these facilities or on any other interstate facilities of American Telephone and Telegraph Company and the Associated Companies of the Bell System without prior authorization of the Commission; and, *Provided further*, That Series 11000 Service shall be offered only in accordance with the provisions of the tariff presently on file with this Commission.

Later, on October 6, 1970, the Chief, Common Carrier Bureau issued an Order and Certificate under delegated authority granting an application by Pioneer (File No. P–C–7954) for furnishing channel service to a CATV operator upon condition, *inter alia*, that service on the authorized facilities:

*** * * shall include only carriage of television and FM radio broadcast signals, that no other interstate voice, video and digital communications shall be furnished by applicant over the facilities authorized without prior authorization by the Commission, and that service is provided only to Jonathan Development Corporation, or its successors or assignees * * *.**

3. Both AT&T and Pioneer challenged the conditions on their respective authorizations; AT&T by a "Petition for Reconsideration" filed on October 5, 1970, and Pioneer by an "Application for Review" filed on November 5, 1970. Action on these pleadings was deferred by the Commission pending the outcome of the rule making proceeding in Docket No. 19117 which looked toward the adoption of substantive and procedural rules governing the establishment of new or revised classifications of communications and the discontinuance of classifications. (27 FCC 2d, at pages 37–38.) We shall address ourselves first to the rule making proposal herein.

4. Comments and/or reply comments on the proposed rule making were received from various interested persons.[1] Those filing consisted primarily of domestic landline carriers, international carriers, miscellaneous and specialized carriers and applicants, and communications customers or their associations. The parties are in disagreement as to the Commission's authority to adopt the proposed rules and whether they would be desirable as a matter of policy, either applied across the board or in the instance of a particular carrier.

5. Upon consideration of the record, we have decided to terminate this rule making without resolution of the issues except with respect to CATV channel service to the extent indicated in paragraphs 14–16

[1] AT&T, GTE Service Corporation; several General Telephone Operating Companies; Rochester Telephone Corporation; United States Independent Telephone Association; United Telephone System; Western Union Telegraph Company; Communications Satellite Corporation; RCA Alaska Communications, Inc.; RCA Global Communications, Inc.; United Video Inc.; Minnesota Microwave, Inc.; KHC Microwave Corp.; East Texas Transmission Company; Western TeleCommunications, Inc.; West Texas Microwave Company; American Petroleum Institute; Aeronautical Radio Inc.; Bethlehem Steel Corporation; American Express Company; Chrysler Corporation; E. I. duPont de Nemours & Co.; Ford Motor Company; Monsanto Company; Olin Corporation; Republic Steel Corporation; Union Carbide Corporation; United States Steel Corporation; Westinghouse Electric Corporation; Weyerhauser Company; Computer Time-Sharing Service Section of the Association of Data Processing Service Organizations, Inc.; National Association of Educational Broadcasters; National Association of Manufacturers; National Retail Merchants Association; Utilities Telecommunications Council; Nebraska Consolidated Communications, Corp.; Western Union International; Data Transmission Co.; and Microwave Communications, Inc.

below. We find it unnecessary to reach the question of whether the Commission's authority extends to rule making of the precise nature proposed in the Notice herein. For, in view of developments which have taken place since the commencement of this proceeding, we are of the view that the proposed rules are not desirable at this time in order to achieve the regulatory objectives to which such rules were directed.

6. Our principal objective in proposing the subject rules was to provide a reasonable opportunity for the competitive development of the market for specialized communications services. It was our concern that this objective could be thwarted by existing carriers who were in a position to institute new offerings for such services simply by filing tariffs, without any prior Commission approval, while at the same time impeding or delaying the entry of new carriers seeking to serve that market by raising various policy objections to the applications of the new entrants for authorization of facilities to provide service. This concern has been substantially mitigated by our *First Report and Order* in Docket No. 18920 (29 FCC 2d 870). By that decision, we resolved that basic policy issues presented by the proposed competitive entry of new carrier applicants into the specialized communications service market. As a consequence, new entry is no longer being delayed by the unresolved status of policy questions raised by existing carriers with respect to the service proposals of each new applicant. Moreover, our *Second Report and Order*, in Docket No. 16495, Domestic Satellites, (June 16, 1972) 35 FCC 2d 844, as substantially reaffirmed on petition for reconsideration, FCC 72–1198 (December 22, 1972), generally prohibits the Bell System companies, for a period of three years from the operational date of its proposed domestic satellite system, from providing specialized services over such system.[2]

7. Under the circumstances, we are of the opinion that we should not impose at this time any requirement for prior approval of new or revised service offerings by existing or new carriers. Moreover, continuation of such a requirement with respect to existing carriers alone might frustrate effective realization of our policy objectives of promoting full and fair competition in the specialized communications market. In this connection, we expressly concluded in Docket No. 18920 that the "public interest would be served by affording users flexibility and a wide range of choices as to how they may best satisfy their expanding and diverse specialized requirements," noting further that the new entrants were "seeking primarily to develop new services and markets, as well as to tap latent, but undeveloped submarkets for existing services" (29 FCC 2d at 906, 909–910, 923). We further stated that our policy objective is "to promote and maintain an environment within which existing and any new carriers shall have an opportunity to compete fairly and fully in the sale of specialized services"; that "our rate-making and regulatory policies and practices

[2] Also, with regard to use of terrestrial facilities of common carriers for the closed circuit distribution of motion pictures or similar program material, see Notice of Inquiry and Proposed Rule-Making in Docket No. 19671, et al., released January 24, 1973, FCC 73–73.

will be appropriately adapted to accomplish this objective"; that "we will not delay the institution of new specialized services by existing or new carriers pending the outcome of" proceedings in the Private Line Rate Case Docket 18128. Finally, we stated that "there is no reason to delay the public benefits that may derive from active and vigorous participation by the Bell System and Western Union in this market, so long as their participation is not a burden upon or significantly detrimental to their other services." (29 FCC 2d, at pages 915–917.)

8. The requirement of prior approval as contemplated by the proposed rule might well operate under current conditions to delay the establishment of service and, in fact, inhibit realization of our policy objectives in Docket 18920. Thus, for example, Microwave Communications, Inc. (MCI), a new carrier entrant, filed new tariffs that went into effect promptly, on one day's notice, effective January 1, 1972, inaugurating MCI's new specialized services between St. Louis and Chicago. Similarly, The Western Union Telegraph Company was able to file and put into effect tariff revisions matching in part the service offerings of MCI, without such tariff offerings being suspended or rejected although we designated the Western Union tariffs for hearing as to the lawfulness thereof. (Western Union/MCI Tariffs; FCC 72–627, Docket No. 19546 released July 25, 1972). Under the rules originally proposed herein, neither MCI nor Western Union would have been able to file their tariffs without prior approval from the Commission. We believe that it would be desirable for the time being at least to avoid imposing these particular kinds of strictures on the carriers. If future experience indicates that carrier behavior is designed to defeat our policy objectives of full and fair competition, we will not hesitate to take appropriate corrective and punitive measures under the Communications Act and their applicable statutes.

9. The proposed rules were further designed to promote a situation whereby public interest questions concerning the provision of a new communications service to the public are resolved, to the extent practicable, before the service is commenced. We are not now in a position to determine whether the proposed rules are necessary to further this objective or would be preferable to other approaches. We believe that it would be helpful in this respect to continue to observe the effectiveness of substantial revisions in Part 61 of our rules, which were adopted on October 13, 1970 in Docket No. 18703, and which govern the filing of tariffs (25 FCC 2d 957). As to new service offerings, these revised tariff rules require carriers to submit, at the time of filing, detailed information showing *inter alia* the basis of rate-making employed, cost projections and data as to the impact of the new offering on the carrier's traffic and revenue. The data required are the same as the data we had proposed to be submitted in our rule-making herein. Thus, we have established procedures by which we already obtain the same kind of supporting data from the carriers that was contemplated by the proposed rules. Such data has been helpful to the Commission in determining the appropriate regulatory action to be taken on offerings of new classes of service (*Western Union/MCI*, *supra.*). Accordingly,

as further experience with these rules dictates, we will give consideration as to whether and to what extent our existing tariff rules are adequate to accomplish the original objectives of our proposal herein and, if not, whether further changes therein might be more appropriate or desirable than rules of the nature proposed herein.

10. In connection with possible revisions of our tariff rules, we recognize that the termination of the rule making proposed herein will make it possible for domestic carriers, as a general rule, to offer new classes or subclasses of communications service over duly authorized facilities merely by the filing of appropriate tariff revisions properly supported by the cost and other data required by Part 61 and otherwise in conformity with our rules. (Exceptions would apply, for example, where the Commission, by order, might require prior special permission before tariff revisions could be filed affecting tariffs in issue in a pending formal proceeding, such as in Docket 18128). Such tariff revisions would become effective automatically unless rejected or suspended by the Commission. Inasmuch as present rules permit tariff revisions that offer new services to be filed on only one day's notice in some cases and on only 30 days' notice in other cases (see 47 C.F.R. 61.58; and 61.60–61.63), we are concerned that such short notice may be insufficient for Commission and interested parties to identify and evaluate the policy and other questions that may be raised by such tariff revisions. Accordingly, in considering further revisions in our tariff rules, we will give consideration to the question of whether or not the notice requirements for tariffs that offer new or revised classes of service should be revised. However, it does not appear necessary to defer termination of the rule-making proceeding herein pending revisions in our tariff rules.

11. Insofar as our original rule making proposal included a proposed rule requiring prior approval before a carrier may discontinue any new or revised classification of service, we have already adopted such a rule (Section 64.702(g)) in our *Computer* decision of March 18, 1971. (28 FCC 2d 267, 288). Thus, this aspect of our original proposal is no longer necessary.

12. Accordingly, in light of the foregoing, we conclude that termination of that portion of the rule making proposal set forth in paragraphs 7–12 of the Notice of Proposed Rule Making herein would best conduce to the proper dispatch of the Commission's business and to the ends of justice in the circumstances (Section 4(j) of the Act).

13. With respect to AT&T's petition for reconsideration of the condition of the September 4, 1970 authorization granting File No. P–C–7825, it is our opinion that we should grant the petition for the reasons set forth above. We do not reach the question of whether and to what extent we have authority under the Act to condition grants under Sections 214 and 309 of the precise manner employed in this case. For the reasons stated, the AT&T condition and other substantially similar conditions placed on domestic authorizations issued since that time will be declared null and void.

14. Turning now to paragraph 14 of the Notice of Proposed Rule Making concerning the conditions placed by the Common Carrier Bureau on the grant of Pioneer's applications (File No. P–C–7964)

for common carrier facilities to provide channel service to a CATV operator. Pioneer challenges the provision stating that service on the authorized facilities "shall include only carriage of television and FM radio broadcast signals, that no other interstate voice, video and digital communications shall be furnished by the applicant over the facilities authorized without prior authorization by the Commission, and that service is provided only to Jonathan Development Corporation, or its successors or assignees" (paragraph 2 above).[3] Upon examination of other authorizations of this nature issued over the past several years, we find that similar conditions have been imposed—though the limitation as to service is sometimes phrased in terms of "no service other than CATV channel service" or "no service other than wide spectrum service." We note in addition that some authorizations contain a condition that the "channel capacity of the coaxial cable facilities is not increased beyond the 12 video channels and 100 FM broadcast channels herein authorized."

15. Conditions of this nature served a useful purpose in the earlier stages of our evolving regulation of CATV. Thus, for example, these conditions facilitated the implementation of our rules and policies respecting limitations on the importation of distant signals by CATV operators. However, these conditions no longer appear necessary in light of our more recent policy determinations and rule changes in the CATV field, such as those encouraging CATV operators to provide services in addition to carriage of broadcast signals, requiring greater channel capacity for new construction in some areas, and requiring certificates of compliance. Moreover, we have recently ruled in the *Specialized Carrier* proceeding that local carriers and CATV operators are not precluded from making arrangements to provide local distribution facilities for the interstate services of specialized carriers (29 FCC 2d 870, 914, 940, fn. 66). In addition, it appears inequitable to continue to impose the kind of service limitations on the authorization of common carrier facilities that are contained in the Pioneer grant, particularly in light of our instant decision not to require prior authorization at this time for the institution of new or revised classifications of domestic services.

16. Accordingly, we will eliminate the challenged conditions in Pioneer's authorization, and declare null and void for other carriers authorized to provide channel service to CATV systems conditions of the nature described in paragraph 14 above. Such carriers will, of course, continue to be subject to Sections 214 and 307–309 of the Communications Act and the Commission's rules implementing those provisions, which may require additional authority.

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[3] Pioneer also claims that a provision requiring it to "make pole attachment or conduit space rights available to any other CATV system in the same telephone service area, upon proper request, within the limitation of technical feasibility, at reasonable charges and without undue restriction as to use," is inappropriate because the instant facilities are to be placed in trenches. However, we think that this condition is proper and consistent with the policies underlying the Commission's Memorandum Opinion and Order in Docket No. 18509 (22 FCC 2d 746). The condition does not require Pioneer to provide trenches to any other CATV operator or impose any other unusual burden not contemplated by Commission in Docket No. 18509.

17. In light of all of the foregoing, IT IS ORDERED, That:

a. The Petition for Reconsideration filed by AT&T on October 5, 1970 IS GRANTED for the reasons stated herein, and the challenged condition (the second proviso) in the Order and Authorization of September 4, 1970 (FCC 70-955) granting File No. P-C-7825 IS DELETED.

b. Similar conditions placed on authorizations for domestic facilities issued to AT&T, The Western Union Telegraph Company and other carriers since September 4, 1970 ARE DECLARED NULL AND VOID.

c. The Application for Review filed by Pioneer-United Telephone Company on November 5, 1970 IS GRANTED to the extent reflected herein and OTHERWISE DENIED; and the condition in the second ordering clause of the Order and Certificate of the Chief, Common Carrier Bureau granting File No. P-C-7954 IS DELETED.

d. Conditions of the nature described in paragraph 14 herein on outstanding authorizations issued pursuant to Section 214 of the Communications Act for the construction and operation of facilities to provide broadband channel service to CATV systems and others ARE DECLARED NULL AND VOID.

e. This proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-91

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

REQUEST, FOR ISSUANCE OF TAX CERTIFICATE FOR SALE OF INTEREST IN CABLE TELEVISION SYSTEM PURSUANT TO SECTION 76.501(a)(2) OF THE COMMISSION'S RULES, BY COX-COSMOS, INC. Re Cable Television System at Charlotte, N.C.	File No. CTAX-6

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION:

1. In our *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816, we adopted Section 76.501 (originally designated Section 74.1131) of the Commission's Rules which, inter alia, prohibits cross ownership, operation, control, or interest of a cable television system with a local television broadcast station, and requires divestiture where necessary to eliminate such existing proscribed cross-relationships.[1] In paragraph 16 of that report and order, we noted that such divestitures can be effected without payment of capital gains tax if the "involuntary conversion" provisions of the Internal Revenue Code are applicable.[2] On January 26, 1972, in *Cosmos Cablevision Corporation*, 33 FCC 2d 293, we granted the first two tax certificate applications pursuant to our new cable television cross-ownership rules.

2. Now before us is an application for a Section 1071 tax certificate, filed on August 22, 1972, by Cox-Cosmos, Inc., with respect to its sale of its cable television system at Charlotte, North Carolina, on June 18, 1971, to the Charlotte Cablevision Company, subsequently renamed

[1] Section 76.501 provides, in pertinent part: "(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in: . . . (2) a television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers) . . ."

[2] Section 1071 of the 1954 Internal Revenue Code provides that: "If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in policy or the adoption of a new policy by the [Federal Communications] Commission with respect to the ownership or control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elected, be treated as an involuntary conversion of such property within the meaning of Section 1033.)"

the Cable Television Company. In support of its application, Cox-Cosmos states that: (a) its owners are (1) Cosmos Cablevision Corporation (80%), a wholly owned subsidiary of Cosmos Broadcasting Corporation, the licensee of Station WIS–TV, Columbia, South Carolina, and (2) Cox Cable Communications, Inc. (20%), 56% of whose stock is owned by Cox Broadcasting Corporation, ultimate parent of Carolina Broadcasting Company, the licensee of Station WSOC–TV, Charlotte, North Carolina; (b) the cable system lies wholly within the predicted City Grade and Grade B contours of WSOC–TV, and partially within the predicted Grade B contour of WIS–TV; [3] (c) Cox-Cosmos has been informed by counsel for the company that purchased the system, a limited partnership, that (as shown in that company's Form 325, on file with the Commission) none of its limited or general partners have any interests in a broadcast permittee or licensee; and (d) that the sale of the system was predicated upon and in compliance with the local-cross-ownership provisions of Section 76.501.

3. The impact of Section 76.501 is that if a cable television system which has a cross-interest relationship with a local television broadcast station proposes to carry the signal of *any* television broadcast station (i.e., performs a key function by which the term "cable television system" is defined), there must be a divestiture of the interest in either the cable television system or the television broadcast station. Thus, a divestiture of the interest in either the system or the station, in compliance with the requirements of new Section 76.501, is clearly "necessary or appropriate" to effectuate a new policy by the Commission with respect to ownership and control of television broadcast stations and cable television systems.

4. On the basis of the foregoing, including Cox-Cosmos' assertions of fact as set forth in paragraph 2 supra, we find that the sale by Cox-Cosmos, Inc., of its above-described cable television system at Charlotte, North Carolina, was necessary or appropriate to effectuation of the new policy adopted by the Commission and reflected in Section 76.501 of our Rules, with respect to the ownership and control of television stations and cable television systems.

Accordingly, IT IS ORDERED, That there BE ISSUED to Cox-Cosmos, Inc., the tax certificate appended hereto, certifying that its sale of its interest in the above-referenced cable television system was necessary or appropriate to effectuation of the new policy adopted by the Commission with respect to the ownership and control of television stations and cable television systems.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[3] With respect to the latter, Cox-Cosmos submits a copy of a map showing the predicted Grade B contour of WIS–TV with respect to Charlotte, and cites Commission File Nos. BPCT–2340 and BMPCT–5228.

109–026—73——2

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Cox-Cosmos, Inc. (a corporation in which a wholly owned subsidiary of the licensee of Station WIS–TV, Columbia, South Carolina, holds an 80 percent interest, and in which a subsidiary of the ultimate parent corporation of the licensee of Station WSOC–TV, Charlotte, North Carolina, holds the remaining 80 percent interest), has reported to the Commission its sale, on June 18, 1971, of its cable television system at Charlotte, North Carolina, to the Charlotte Cablevision Company (subsequently renamed the Cable Television Company), to effectuate compliance with Section 76.501 of the Commission's Rules with respect to ownership and control of cable television systems and television broadcast stations.

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rule and policy prohibiting cross-ownership, operation, control, or interest of a cable television system with a local television broadcast station, and, in particular, to effectuate compliance with the provisions of Section 76.501 (originally designated Section 74.1131) of the Commission's Rules, adopted June 24, 1970, and released July 1, 1970, in the *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816.

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this 23rd day of January, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-86

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
Petitions To Show Cause To Be Directed Against:
ELECTRONIC FUTURES, INC., 527 DODGE AVENUE, NORTH HAVEN, CONN. 06473

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released February 1, 1973)

BY THE COMMISSION:

1. The Commission has before it two Petitions for Order to Show Cause, filed on September 22, 1972, by HC Electronics, Inc., of Mill Valley, California, alleging that wireless auditory training microphones manufactured and sold by Electronic Futures, Inc., of North Haven, Connecticut, are in violation of provisions of the Communications Act and the Rules and Regulations of the Federal Communications Commission. The device in question is the Electronic Futures, Inc. (EFI) Model 440 microphone, which has been type approved by the Commission in accordance with Parts 2 and 15 of the Rules, under type approval number WM-125.

2. The first petition asks the Commission to direct EFI to show cause why its type approval certificate should not be withdrawn. The second asks the Commission to direct EFI to show cause why it should not be ordered to cease and desist from marketing a type-approved device in which it had made unauthorized changes, and to retrieve violative devices already in the field and bring them into compliance with the rules. Both petitions allege that EFI has made unauthorized changes in the Model 440 microphone which have resulted in overpower operation in the hands of users. The specific change complained of is the substitution of a removable plastic button for an unremovable heat-sealed button as the plug in an access hole leading to a potentiometer which controls RF output. As a result of this substitution, the user may easily adjust the potentiometer to output levels beyond the limits set forth in Section 15.212 of the Rules.

3. The Commission on December 20, 1972, adopted a letter directing EFI to stop manufacturing and marketing Model 440 microphone units which do not comply with type approval documents and with the Rules, and further directing EFI to modify units already in the field so as to bring them into compliance.[1] By reply letter dated De-

[1] Letter to Mr. James J. McKeon, President, Electronic Futures, Inc. —— FCC 2d ——.

cember 26, 1972, EFI's parent corporation, Educational Development Corp., outlined the steps it intends to take to carry out the Commission's directives.

4. In a separate filing with the Commission, EFI on November 13, 1972, requested modification of its type approval to permit the use of nylon rivets which expand at the base to plug the access hole leading to the potentiometer. In support of its request for modification, EFI stated that it was not practicable to heat seal the buttons from the inside in the manufacturing process, as the current type approval required. The Commission's Laboratory Division approved the modification by letter dated January 9, 1973.

5. These actions by the Commission and EFI will achieve the objectives sought in the two petitions filed by HC Electronics. EFI has been directed to comply with the marketing and type approval regulations and has pledged to do so. EFI also has undertaken to modify the units it sold which are not in compliance with the Commission's requirements. The type approval modification will provide a practicable means of ensuring that users of the device will not be able to adjust its power output.

6. The Commission in the past has recognized the social usefulness of devices such as those produced by HC Electronics and EFI and has tempered its enforcement efforts in this area with due regard for the needs of deaf children.[2] In view of these considerations, it would serve no useful purpose to initiate proceedings looking toward a cease and desist order or withdrawal of type approval, or to proceed further in this matter in any other way.[3]

7. Accordingly, IT IS ORDERED that the Petitions for Order to Show Cause, filed by HC Electronics, are DISMISSED.

FEDERAL COMMISSIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[2] See, for example, the Commission's action on HC Electronics' request for a waiver of radiation limits on auditory training devices. 28 F.C.C. 2d 117.

[3] We take this opportunity to address an ancillary matter concerning these principals. In a December 1, 1972, letter in support of these petitions, HC Electronics noted that it had requested permission to inspect EFI's type approval application for the Model 440 microphone, and that the Commission had not acted on the request. Under Section 0.457(d)(1)(ii), type approval data is not ordinarily available for inspection, and inspection will be permitted only upon a "persuasive showing as to reasons for inspection" contained in a request submitted under Section 0.461. HC's request, dated February 23, 1971, stated that the type approval data was essential to HC's then-pending Petition for Rule Making which sought revision of the rules governing auditory training devices. When the Commission granted HC's Petition for Rule Making (Notice of Proposed Rule Making and Memorandum Opinion and Order, Docket No. 19185, adopted March 24, 1971), the request for access to EFI's type approval application became moot, because the reasons stated in support of inspection no longer existed. Since HC did not press its request or submit new justification for inspection, it was assumed that no response was required. HC's December 1 letter also raised a question about the method of testing wireless microphones for compliance. The published procedure is contained in Bulletin OCE 19, which was released in January 1969; but some devices, including the EFI Model 440, have been tested by different means in connection with applications for type approval. The Commission will address this question in connection with petitions for reconsideration of its Report and Order promulgating regulations governing auditory training devices (Docket No. 19185, 35 F.C.C. 2d 677).

F.C.C. 73R-52

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
EMPIRE COMMUNICATIONS Co.	Docket No. 19301
For a Construction Permit to Establish Additional Facilities for Station KLP 595 in the Domestic Public Land Mobile Radio Service at Eugene, Oreg.	File No. 531-C2-P-70
LANE PAGING, INC.	
For a Construction Permit to Establish New Facilities in the Domestic Public Land Mobile Radio Service at Eugene, Oreg.	Docket No. 19302 File No. 1895-C2-P-70

MEMORANDUM OPINION AND ORDER

(Adopted January 26, 1973; Released January 31, 1973)

BY THE REVIEW BOARD:

1. The above-captioned applications were designated for hearing by Commission Memorandum Opinion and Order, FCC 71-856, released August 26, 1971, 31 FCC 2d 477. The issues were enlarged by Memorandum Opinion and Order, FCC 72R-30, released February 7, 1972, 33 FCC 2d 721, to determine, *inter alia*, whether harmful adjacent channel interference would be caused to the reception of mobile radio signals from the Lane Paging, Inc. (Lane) proposal. Land and the Common Carrier Bureau applied for review of the Review Board's Memorandum Opinion and Order and the applications for review were dismissed by Commission Memorandum Opinion and Order, FCC 72-447, 35 FCC 2d 82, petition for reconsideration denied, FCC 72-750, released August 31, 1972. Lane thereupon tendered an amendment to its application which would change its transmitter site to the same location as that proposed by Empire Communications Company (Empire). Empire and the Common Carrier Bureau opposed the amendment. When Lane sought assurance that the site would be available to it, Lane learned that the parkland proposed as a site would not be made available either to it or to Empire. Lane thereupon proposed a new site on private property adjacent to the park. The Presiding Judge, by Memorandum Opinion and Order, FCC 72M-1310, released October 20, 1972 granted Lane's petition and accepted its amendment. By Order, FCC 72M-1362, the Presiding Judge granted Empire permission to appeal that action.[1]

[1] The Board also has before it an opposition, filed November 17, 1972, by Lane; comments, filed November 17, 1972 by the Common Carrier Bureau; and a reply, dated November 22, 1972 by Empire.

2. Empire contends that the Presiding Judge erred when she found good cause for Lane's amendment.[2] Empire argues that Lane was on notice that its original site would not be suitable many months before it tendered its amendment; that the new site would result in a comparative advantage to Lane; and that since it proposes to move the site three miles and would enlarge the service area, the amendment constitutes a major change in Lane's application [3] and must be returned to the processing line for appropriate public notice.[4] Empire argues further that the language of Section 21.30(b) which was relied upon by the Bureau and the Presiding Judge to justify the acceptance of Lane's late filed major amendment does not warrant that result.

3. The appeal will be denied. The Board agrees with the Presiding Judge that Lane's late filed amendment should be accepted. However, we cannot agree that the language of Sec. 21.30(b) [5] quoted by the Presiding Judge controls this case. That rule deals with grants without a hearing, and the language in question is to be applied in determining whether there is pending a mutually exclusive application which would require a hearing. Thus it has no bearing on the propriety of an amendment tendered after the application is designated for hearing. The pertinent Rule is 21.23(b). See Fn 2, *supra*. Moreover, the Board does not agree that the amendment before us should be treated as a major amendment. The proposal neither adds or changes a frequency, nor does it improve the operating characteristics of the proposal, nor changes the type of service to be offered. It does not enlarge the service contour (see ¶4, *infra*), significantly change the location of points of communication, or materially alter an existing or proposed service. See Fn 3, *supra*. In these circumstances the Board is satisfied that the move to a new site need not be regarded as a major change.

4. Moreover, we are satisfied that there is good cause for acceptance of the amendment and the public interest will be served by preserving a choice between qualified applicants. The amendment was proffered to meet an issue added to this proceeding by the Review Board pursuant to Empire's petition. Lane proceeded with its preparations to file an amendment immediately after the Commission dismissed its

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[2] Section 21.23(b) of the Commission's Rules:
(b) Requests to amend an application after it has been designated for hearing will be considered only upon written petition properly served upon the parties of record and will be granted only for good cause shown.

[3] § 21.23(c)
(c) An application amended by a major amendment thereto (as e.g., any amendment which will change or add a frequency, or improve the operating characteristics of an existing or proposed station; or enlarge the service contour or significantly change the location or points of communications of an existing or proposed station; or which will materially alter the nature of an existing or proposed service) is subject to the provisions of § 21.27.

[4] Section 21.27 Processing of applications
(a) All applications for instruments of authorization covered by this part and major application amendments (as indicated in § 21.23) are subject to the provisions of this section, except applications for: . . .
(b) No application acceptable for filing and subject to the provisions of this section shall be granted by the Commission earlier than 30 days following issuance of public notice by the Commission of the acceptance for filing of such application or of any major amendment thereof.

[5] "Where major changes which do not relate to the mutually exclusive aspect of a proceeding are warranted, or in the case of multiple mutually exclusive issues where the warranted major changes serve to resolve one or more of the issues but do not relate to the mutually exclusive aspect of the proceeding, such changes or amendments will not serve to alter the existing mutually exclusive status so long as new conflicts are not created." . . .

application for review of the Review Board Order which added the adjacent channel interference issue. This did not unduly delay the proceeding, but, rather by the elimination of an issue, expedited it. As noted by the Common Carrier Bureau, Lane's engineering study, using standard procedures set forth in the Commission's Rules, shows that operation from the amended site would result in slight decreases (3.6 square miles and 1,316 persons) in the areas and population to be served. The Board agrees with the Common Carrier Bureau that these changes are *de minimis*. Empire's contention that the amended proposal would result in a significant expansion of the Lane service area must be rejected for lack of adequate support and required specificity. *Jennifer Mobilfone*, 37 FCC 2d 1030 (1972); Rule 1.229(c). In addition to failure to adequately explain the methods utilized in making its determination, Empire's showing contains inadequately supported generalized statements and estimates which fail to provide the reviewing authorities with information required for the fully informed and considered determination required by the Rules and the Communications Act. Furthermore, no new issues or parties are required by the grant of the amendment, nor is any party to this proceeding prejudiced thereby. Moreover, the objectionable adjacent channel interference which was the subject of the issue added by the Review Board would be eliminated by Lane's proposed amendment. The Review Board agrees with the Presiding Judge that in these circumstances acceptance of the amendment would be in the public interest.

5. Accordingly, IT IS ORDERED, That the appeal from order granting petition for leavé to amend, filed on November 7, 1972, by Empire Communications Company, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 73R–48

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ERWIN O'CONNER TRADING AS ERWIN O'CONNER BROADCASTING CO., DAYTON, TENN. NORMAN A. THOMAS, DAYTON, TENN. For Construction Permit	Docket No. 18547 File No. BPH–6408 Docket No. 18548 File No. BPH–6479

MEMORANDUM OPINION AND ORDER

(Adopted January 26, 1973; Released January 31, 1973)

BY THE REVIEW BOARD: BERKEMEYER, NELSON AND PINCOCK.

1. The Review Board has before it a petition for reconsideration of its decision, FCC 72R–315, released November 7, 1972, 2 FCC 2d 983, —— RR 2d ——, filed December 7, 1972, by Erwin O'Conner, and two petitions for leave to amend filed December 7, 1972, and January 2, 1973, respectively, by Erwin O'Conner.[1] O'Conner's application for a new FM station was denied because he failed to establish his financial qualifications. O'Conner has advanced no new facts or arguments to support his position. His petition for reconsideration will therefore be denied. Moreover, both of his petitions to amend his application attempt to bolster his financial showing. O'Conner has failed to show cause to justify the acceptance of an amendment which would require the record to be reopened for further hearing at this late stage of the proceeding.[2]

2. Accordingly, IT IS ORDERED, That the petition for reconsideration filed December 7, 1972 by Erwin O'Conner IS DENIED and,

3. IT IS FURTHER ORDERED, That the petitions for leave to amend filed December 7, 1972 and January 2, 1973 by Erwin O'Conner ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[1] The Review Board also has before it oppositions to O'Conner's petition to reconsider, filed December 19, 1972, by the Broadcast Bureau, and December 29, 1972, by Norman A. Thomas; a reply to Thomas' oppositions, filed January 4, 1973, by O'Conner, oppositions to O'Conner's December 7 petition to amend, filed by the Broadcast Bureau on December 18, 1972, and by Thomas on December 29, 1972; oppositions to O'Conner's January 2, 1973, petition to amend, filed by the Broadcast Bureau on January 9, 1973 and by Thomas on January 17, 1973; and O'Conner's reply to the Bureau's opposition to January 2 petition to amend, filed January 15, 1973.

[2] *WEBR* v. *FCC* 136 U.S. App. D.C. 316, 420 F. 2d 158, WWIZ 4 FCC 2d 608, —— RR 2d ——.

F.C.C. 73-99

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (LA CROSSE, WIS.)	Docket No. 19533 RM-1845

REPORT AND ORDER

(Adopted January 23, 1973; Released January 29, 1973)

BY THE COMMISSION:

1. The Commission, on June 28, 1972, adopted a Notice of Proposed Rule Making (37 Fed. Reg. 13642) proposing to amend the FM Table of Assignments (Section 73.202(b) of the Rules) by adding Channel 285A to LaCrosse, Wisconsin. The action was based on the petition of LaCrosse Radio, Inc. (LaCrosse Radio), licensee of AM Station WLCX, LaCrosse.[1] Only LaCrosse Radio filed comments in response to the Notice.

2. LaCrosse, population 51,153, is the seat of LaCrosse County, population 80,468.[2] LaCrosse Radio states that LaCrosse is the largest city in southwestern Wisconsin and is the economic center for an area of more than 200,000 persons in LaCrosse County and the six adjacent counties which surround it. Of the six adjacent counties, four are in Wisconsin (Trempealeau, Jackson, Monroe, and Vernon) and have a total population of 95,178, and two (Houston and Winona) are in Minnesota and have a combined population of 60,858. LaCrosse is by far the largest city in the seven-county area. With the exception of Winona (in Winona County) which has a population of 26,438, all other cities in the seven counties are under 6,500. LaCrosse points out that LaCrosse County had a greater growth rate than any of the six surrounding counties, either on an absolute or a percentage basis, during the period of 1960 to 1970.

3. Presently assigned to LaCrosse are Channel 240A and Class C Channel 227. This intermixture was accomplished in Docket No. 18051, 13 Pike & Fischer, R.R. 1503 (1968), in which Channel 240A was assigned to LaCrosse because although the community and surrounding area merited the addition of a second Class C channel, none was available for assignment that would meet our spacing requirements. As we pointed out in the Notice in the present proceeding, our concern over

[1] LaCrosse Radio states that if the channel is assigned it will file an application for a construction permit for its use.

[2] All population figures are from the 1970 Census unless otherwise specified.

intermixture resulting from assignment of Channel 285A to LaCrosse is diminished because of the already existing intermixture.

4. Channels 240A and 227 are presently occupied by Stations WWLA(FM) and WSPL(FM), respectively. In addition to these FM stations, there are three unlimited-time AM stations in LaCrosse—WKBH, WKTY, and WLCX. Stations WKTY and WSPL(FM) are under common ownership. Station WLCX, a Class IV station, is licensed to LaCrosse Radio, the petitioner in this proceeding.

5. The engineering submission filed with the petition of LaCrosse Radio indicated that the proposed assignment of Channel 285A could be made, consistent with spacing requirements, if a site were selected at least 4½ miles west of LaCrosse. The Notice questioned whether such sites were available, and information submitted in support of LaCrosse Radio's comments indicates that there are several. LaCrosse Radio shows that one of these, some five miles southwest of LaCrosse, overlooks the community and that a station operating from this site would provide the requisite 70 dbu signal over LaCrosse.

6. The Notice also raised a question about the fact that assignment of Channel 285A to LaCrosse would preclude use of that channel in Rushford, Minnesota (pop. 1,335), Houston, Minnesota (pop. 1,082), and Caledonia, Minnesota (pop. 2,563). It pointed out that there are no AM stations or FM assignments in these communities, and expressed the necessity of having more data concerning the need for a first local service in these communities as contrasted with the need of LaCrosse for a third channel, and concerning the possibility that another channel would be available for use in one or more of these communities.

7. In response to this, LaCrosse Radio states that it is highly unlikely that an FM channel assigned to any of these three communities could or would be activated. In support of this statement it presents data to show that insufficient advertising revenues would be present in the communities to make a station viable. Moreover, petitioner points out that there are at least two FM services and a substantial number of AM services presently received in each of the communities that would inhibit the development of new FM service in them.[3] It also states that the population of each of the three communities has remained substantially the same over the past ten years, that the populations of the counties in which they are located have decreased, and that petitioner knows of no planned or likely economic development that would suggest the possibility of future population growth. In contrast with this, LaCrosse Radio points to the information set forth in paragraph 2 above, and further states that the assignment of a third channel to LaCrosse would treat that city in a manner similar to that in which other cities of approximately the same size have been treated in its area of the United States.

8. In regard to the question of availability of other channels for use in the aforementioned three communities, LaCrosse Radio shows that Channel 280A could be assigned to Caledonia, the largest of the

[3] LaCrosse Radio also states that a station operating on Channel 285A at LaCrosse would provide service to Caledonia and Houston.

three communities, and meet all spacing requirements, although it would be necessary to substitute Channel 257A for Channel 280A at Waukon, Iowa, which is occupied by Station KNEI-FM.[4]

9. On consideration of the issues involved, we find that the public interest, convenience, and necessity would be served by adding Channel 285A to LaCrosse. In this respect, it should be noted that, according to our assignment criteria, a community of this size merits 2 to 4 channels. (See Further Notice of Proposed Rule Making in Docket No. 14185, adopted July 25, 1962 (FCC 62-867) and incorporated by reference in paragraph 25 of the Third Report, Memorandum Opinion and Order, dated July 25, 1963, 23 Pike and Fischer, R.R. 1859, 1871 (1963).) A site for use of the channel must be at least 4½ miles west of LaCrosse.

10. Authority for the action taken herein is contained in Sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended. In accordance with the foregoing, IT IS ORDERED, That effective March 9, 1973, the FM Table of Assignments (Section 73.202(b) of the Rules) IS AMENDED, with respect to the city listed below, to read as follows:

City	*Channel No.*
Lacrosse, Wis.	227, 240A, 285A

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[4] LaCrosse Radio also says that Channel 272A occupied by Station WGBM(FM) at Viroqua, Minnesota, could be assigned to Caledonia and a channel substituted at Viroqua. (It may be noted that Station KNEI-FM's channel is assigned to Decorah, Iowa.) Although no mention is made of this, if either of these actions were proposed, it would be necessary to provide for reimbursement for changes in the frequency of either Station KNEI-FM or KGBM(FM).

F.C.C. 73-127

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS. (CHATSWORTH, GA.; UNION CITY, TENN.; CAMDEN, TENN.; ELDORADO, ILL.)	Docket No. 19613 RM-1954, RM-2035, RM-2028, RM-2039

REPORT AND ORDER

(Adopted January 31, 1973; Released February 5, 1973)

BY THE COMMISSION:

1. The Commission has before it its Notice of Proposed Rule Making adopted October 12, 1972 (37 Fed. Reg. 22631), inviting comments on a number of changes in the FM Table of Assignments (Section 73.202(b) of the Rules). The communities, channel assignments proposed, and petitioning parties are as follows:

RM-1954—Assign Channel 257A to Chatsworth, Georgia (Earl L. Bradsher).

RM-2928—Assign Channel 285A to Union City, Tennessee (Ed Perkins).

RM-2035—Assign Channel 252A to Camden, Tennessee (Ray Smith).

RM-2039—Assign Channel 272A to Eldorado, Illinois (Elliott O. Partridge, M.D.).

2. In each of the above cases, the petitioning party seeks the assignment of a first channel without requiring any other changes in the FM Table of Assignments. With the exception of the Chatsworth proposal, each assignment can be made in conformance with the Commission's minimum mileage separation rule. For Chatsworth, the transmitter site would have to be located immediately southeast of the city in order to meet spacing requirements.

3. The petitioning party for each of the proposed assignments filed supporting statements or comments and reiterated his intent to apply for the channel, if assigned, and to build a station, if authorized. The statements or comments of the Chatsworth, Union City and Camden petitioners incorporated by reference material in their petitions for rule making. No other parties filed comments. All proposals were unopposed except for that concerning Eldorado, which was opposed by Lawrence Elliott in reply comments. Dr. Partridge, the Eldorado petitioner, filed a "Motion to Strike" the Elliott reply comments.

4. In arriving at our decision herein, we have given consideration to all of the comments, supporting statements, and other pleadings. In the Notice of Proposed Rule Making, we set out economic and other information pertaining to the need for a first FM assignment in each of the communities. That information is accepted as being substantially correct and will not be repeated here, except to say that the communities range in size from 2,706 for Chatsworth to 11,925 for Union City (1970 Census), that a daytime-only AM station operates at Camden, a Class IV AM station operates at Union City, and that there are no local broadcast facilities at Chatsworth or Eldorado.

5. As stated above, Lawrence Elliott, in reply comments, filed an opposition to the Eldorado proposal. Mr. Elliott states that he and several other residents of the city of Nashville, Illinois, have for some time been planning the preparation and filing of a petition for rule making to assign Channel 272A to Nashville, Illinois. He further states that the proposed assignment of Channel 272A to Eldorado, Illinois, would, by virtue of a 15-mile short spacing, prohibit the assignment of Channel 272A to Nashville. In our Notice of Proposed Rule Making we stated that counterproposals advanced in the proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. Since Mr. Elliott made his counterproposal in reply comments, we shall not give consideration to his proposal. Moreover, since he has failed to submit any technical supporting data that his proposal would be short-spaced to the Eldorado proposal, we have no basis for giving consideration to his allegation.

6. Authority for the adoption of the amendment contained herein appears in Sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

7. In view of the foregoing, IT IS ORDERED, That effective March 16, 1973, Section 73.202(b) of the Commission's Rules, the FM Table of Assignments, IS AMENDED to read as follows:

City	*Channel No.*
Georgia: Chatsworth	[1] 257A
Illinois: Eldorado	272A
Tennessee:	
Camden	252A
Union City	285A

[1] A site located immediately southeast of Chatsworth would be required in order to meet the minimum spacing requirements of the rules for Channel 257A.

8. IT IS FURTHER ORDERED, that the "Motion to Strike," filed by Elliott O. Partridge, M.D., IS GRANTED.

9. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-88

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 89, 91, AND 93 OF THE COMMISSION'S RULES AND REGULATIONS CONCERNING THE USE OF THE FREQUENCY PAIR 451.800/456.800 MHz	Docket No. 19673 RM-1715

NOTICE OF PROPOSED RULE MAKING

(Adopted January 23, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Special Industrial Radio Service Association, Inc. (SIRSA), has filed a petition proposing amendment of Parts 89, 91, and 93 of the Commission's Rules relating to the use of the frequency pair 451.800/456.800 MHz. SIRSA proposes amending Section 91.504 of the Special Industrial Radio Service Rules to allow, on a secondary non-interference basis, itinerant fixed operations (control and relay stations) on the frequency pair 451.800/456.800 MHz. Second, the petitioner requests the deletion of the assignment of this same frequency pair from all services in Parts 89 (Public Safety) and 93 (Land Transportation) now having access to them on a secondary basis for fixed operations.[1] Finally, SIRSA asks us to delete restrictions which limits the use of this frequency pair for fixed operations to locations which are at least 75–100 miles removed from metropolitan areas with populations of 200,000 or more.

2. Prior to 1967, the frequency pair 451.800/456.800 MHz was available on a primary basis for itinerant mobile service and on a secondary basis for limited fixed operational requirements. In 1968, rule amendments (Docket 13847, 11 FCC 2d 648, 12 RR 2d 1555) eliminated the use of frequencies in the 450–470 MHz band by fixed stations other than control stations used for the secondary control of mobile relay stations within a given service. At the same time, this rule making provided for fixed use in other radio services on a secondary basis outside urbanized areas of 200,000 or more population. As a result, this frequency pair became available for assignment to fixed stations in the Public Safety and Land Transportation Radio Services under Parts 89 and 93 of the Commission's Rules. The rationale of this change was to protect these frequencies, as much as possible, for mobile operations and prevent de facto pre-emption by fixed systems while

[1] Sections 89.101(p) and 93.101(b).

at the same time providing for reasonable accommodation of fixed systems in areas where there was little need for mobile systems. However, petitioner points out that the result has been that, as a practical matter, there are currently no provisions in the Rules permitting use of frequencies in the 450–470 MHz band for itinerant fixed operations in the Special Industrial Radio Service. Further, since itinerant users often employ their systems in areas where there are no existing wire line facilities, or the operation is in specific locations for such limited durations that the installation of wire lines is impractical, they often are left without any control and relay facilities for their low band or VHF base/mobile stations. Consequently, their only recourse has been to negotiate special arrangements for frequencies with the cognizant advisory committee and to license control/relay links each time they move into a new location. The Commission agrees with petitioner that these processes are cumbersome and inconsistent with our policy under which we make it possible for itinerant licensees to operate their systems without incurring the delay inherent in obtaining coordination and clearance every time they move into a particular location for a short period of time. Furthermore, we are of the opinion that since this frequency pair is presently generally available for itinerant base, mobile relay and mobile operations, occasional itinerant fixed operations should not cause significant co-channel interference problems with mobile service licensees (beyond that which might otherwise be anticipated from other itinerant mobile service systems.) We, therefore, propose to amend our Rules to designate the frequency pair 451.800/456.800 MHz as available in the Special Industrial Radio Service on a secondary basis for itinerant control and relay links, when they are associated with temporary base and mobile systems licensed on other itinerant or general use frequencies allocated to the Special Industrial Radio Service.

3. The Commission further agrees with the petitioner's argument that it should delete the assignment of this frequency pair from all Parts 89 and 93 services now having access to them on a secondary basis for fixed operations. Few, if any, licensees in these services use these frequencies on a secondary basis for fixed operations knowing that serious co-channel interference can occur at any time, without prior warning because the itinerant mobile service is not coordinated. In fact, nearly all users are licensees in the Special Industrial Radio Service who use this frequency pair for its intended mobile service function. The Commission, therefore, proposes to eliminate this frequency pair from Parts 89 and 93 services.

4. With regard to the petitioner's third proposal, we do not think it appropriate, at this time, to eliminate the geographical limitation on fixed operations within a 75–100 mile distance from metropolitan areas with populations of 200,000, as requested by SIRSA's petition. To do so would in all probability have the undesired result of removing this pair from mobile service use. Thus, while we do not foresee the possibility of permitting fixed use of the frequency pair in areas where we are already experiencing frequency congestion problems, we believe there may be a possibility of modifying the 200,000 population stand-

ard, since we do not believe that frequency conflicts need be expected in all of the 87 areas included. Any action taken to consider a change for Special Industrial should also be applied in our other radio services since their need for additional fixed uses may be as great or greater than in petitioner's service. Accordingly, we plan to study the possibilities of revising the 200,000 standard. Pending an overall review of this limitation, this portion of the SIRSA petition is denied.

5. Accordingly, the petition (RM–1715) filed by SIRSA is GRANTED to the extent indicated herein; and it is DENIED in all other respects.

6. The proposed rule amendment, which is set forth in the attached appendix, is issued pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

7. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before April 6, 1973, and reply comments on or before April 20, 1973. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

8. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and fourteen copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

I. Part 89 of the Commission's Rules is amended as follows:

In Section 89.101(p) frequencies 451.800 MHz and 456.800 MHz are deleted.

§ 89.101 Frequencies.

* * * * * * *

(p) (Amended)

II. Part 91 of the Commission's Rules is amended as follows:

1. Section 91.504(a) is amended to read as follows:

§ 91.504 Frequencies available.

(a) * * *

Frequency or band	Class of stations	General reference	Limitations
*	*	*	*
451.800	Operational. Fixed base and mobile	Itinerant use	12, 28, 35
*	*	*	*
456.800	Operational. Fixed base and mobile	Itinerant use	12, 28, 35
*	*	*	*

2. Section 91.504(b) is amended by adding sub-paragraph (35) to read:

* * * * * * *

(35) This frequency may be assigned to an itinerant fixed control or relay station on a secondary non-interference basis to land mobile stations in this service, provided that the fixed relay or control station is to be associated with base and mobile facilities authorized to use other itinerant or general use frequencies available in this service. All such use of these frequencies for fixed systems is limited to locations 100 or more miles from the center of any urbanized area of 200,000 or more population, except that the distance may be 75 miles if the plate input power does not exceed 30 watts. All such fixed systems are limited to a maximum of two frequencies and must employ directional antennas with a front-to-back ratio of at least 15 db. For two-frequency systems, the separation between transmit-receive frequencies is 5 MHz. The centers of urbanized areas of 200,000 or more population are determined from the appendix, page 226, of the U.S. Commerce publication "Air Line Distance Between Cities in the United States." Urbanized areas of 200,000 or more population are defined in the U.S. Census of Population, 1960, Vol. 1, Table 23, page 1–50.

III. Part 93 of the Commission's Rules is amended as follows:

In section 93.101(b), the frequencies 451.800 MHz and 456.800 MHz are deleted.

§ 93.101 Frequencies.

* * * * * * *

(b) (Amended)

* * * * * * *

109-026—73——3

F.C.C. 73-90

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re GENERAL ELECTRIC CABLEVISION CORP., ANDERSON, IND. For Certificate of Compliance	CAC-731 IN074

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION:

1. On June 26, 1972, General Electric Cablevision Corporation filed an application (CAC-731) for a certificate of compliance for a new cable television system to operate at Anderson, Indiana. Public notice of this application was given July 7, 1972, and was followed by an "Objection of Indiana Broadcasting Corporation Pursuant to Section 76.27" filed August 7, 1972, by the licensee of Station WISH-TV, Indianapolis, Indiana. On September 6, 1972, GE filed a "Reply of General Electric Cablevision Corporation", and on January 10, 1973, it filed an amendment to its application.

2. Indiana Broadcasting objects to GE's application on grounds: (A) that it does not provide the showing required by Section 76.13(a)(4) of the Commission's Rules [1] regarding the plans it is formulating for its access channels as required by Section 76.251 of the Rules; (B) that GE did not file its equal employment opportuntiy statement as required by Section 76.13(a)(8) of the Rules; and (C) that GE has not indicated that it will comply with the Commission's new syndicated programming exclusivity rules.

3. We rule on the objections as follows: (A) on January 10, 1973, GE amended its application to state that, "Applicant, with 30 channels available, has sufficient capacity to implement a comprehensive access program as follows: (a) For each Class I cable channel utilized, the system will have an additional channel available, 6 MHz in width, for the transmission of Class II and Class III signals; (b) The system will maintain a technical plant with 2-way capacity; (c) One specifically designated Public Access channel will be maintained,

[1] Section 76.13(a)(4) of the Rules provides that:
"(a) For a cable television system not operational prior to March 31, 1972 (other than systems that were authorized to carry one or more television signals prior to March 31, 1972, but did not commence such carriage prior to that date), an application for certificate of compliance shall include:

"(4) A statement that explains how the proposed system's franchise and its plans for availability and administration of access channels and other nonbroadcast cable services are consistent with the provisions of §§ 76.31 and 76.251."

with equipment and facilities available for its use; (d) One specifically designated educational access channel will be utilized; (e) One specifically designated channel for local government use will be available; (f) Channels will be available on a leased basis, subject to the Commission's rules concerning use and displacement; (g) When access channels are used to the degree contemplated by the rules, capacity for non-broadcast access will be expanded; (h) No program content control will be exercised over these channels, but operating rules for their use will be established; (i) The educational and local government channels will be made available, without cost, for five years following completion of the basic trunk line of the system and commencement of service;[2] (j) A full-time Director of Local Programming has been employed to develop the use of these channels in Anderson." We hold this to be an acceptable showing of consistency. E.g. *Viking Media Corporation*, FCC 72-875, —— FCC 2d ——. (B) GE has now filed its required equal employment opportunity statement; and (C) we have no requirement that an applicant give interested parties advance assurance of intent not to violate any particular rule. We note, of course, GE's statement that it will operate in accordance with our rules.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection of Indiana Broadcasting Corporation Pursuant to Section 76.27" filed August 8, 1972, IS DENIED.

IT IS FURTHER ORDERED, That General Electric Cablevision Corporation's application (CAC-731) for a certificate of compliance for a new cable television system to operate at Anderson, Indiana, IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[2] We understand this to be a restatement of Section 76.251(a)(10) of the Rules and expect the applicant to adhere to the terms of that provision.

F.C.C. 73-92

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re GENERAL ELECTRIC CABLEVISION CORP., DECATUR, ILL. For Certificate of Compliance	CAC-550 IL135

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released February 5, 1973)

BY THE COMMISSION:

1. On June 2, 1972, General Electric Cablevision Corporation filed an application for certificate of compliance (CAC-550) in which it requested authority to add three distant signals to its existing cable television system at Decatur, Illinois (in the 64th television market). The system presently carries the following television signals: WAND (ABC), Decatur, Illinois; WCIA (CBS), WICD (NBC), both Champaign, Illinois; WICS (NBC), Springfield, Illinois; and WILL (Educ.), Urbana, Illinois. The system proposed to add the following distant signals: KPLR-TV (Ind.), St. Louis, Missouri; WTTV (Ind.), Bloomington, Indiana;[1] and WCIU-TV (Ind.), Chicago, Illinois. On July 11, 1972, WFIL, Inc., licensee of Television Broadcast Station WAND, Decatur, Illinois, filed an "Opposition to Application for Certificate of Compliance". On July 12, 1972, Midwest Television, Inc., licensee of Television Broadcast Station WCIA, Champaign, Illinois filed an "Objection Pursuant to Section 76.17". On August 11 ,1972, General Electric filed a reply to the oppositions in which, *inter alia*, it withdrew its proposal to carry WCIU-TV, and on January 10, 1973, General Electric amended its application.

2. In its opposition, WFIL, Inc., objects only to carriage of WCIU-TV. In its objection, Midwest opposes carriage of WCIU-TV and argues that General Electric must guarantee to provide network and syndicated exclusivity.

3. General Electric's deletion of its proposal to carry WCIU-TV has mooted WFIL, Inc.'s objection, as well as the portion of Midwest's objection which related to this problem. For the rest, General Electric assures us that it intends to operate its system in accordance with applicable Commission regulations.

[1] As a result of the addition of distant signals to the carriage, General Electric will supply the required access channels and production facilities.

In view of the foregoing, the Commission finds that a grant of the above-captioned application for certificate of compliance would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Application for Certificate of Compliance" filed July 11, 1972, by WFIL, Inc., IS DISMISSED.

IT IS FURTHER ORDERED, That the "Objection Pursuant to Section 76.17" filed July 12, 1972, by Midwest Television, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application for certificate of compliance (CAC–550) IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R–49

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of HARVEST RADIO CORP., FERGUS FALLS, MINN. For Construction Permit	Docket No. 18852 File No. PB–17918

MEMORANDUM OPINION AND ORDER

(Adopted January 26, 1973; Released January 31, 1973)

BY THE REVIEW BOARD:

1. Following issuance of an Initial Decision proposing denial of Harvest Radio Corporation's application,[1] a document entitled "Exceptions to the Opinion" was filed December 8, 1972, by the Secretary-Treasurer of the applicant purportedly on behalf of the applicant and himself. Replies to these purported exceptions were filed by the Broadcast Bureau on December 20, 1972, and by Empire Broadcasting Stations, Inc., a party respondent, on December 29, 1972. On December 27, 1972, the Bureau filed a motion to strike the exceptions stating that counsel for Harvest had informed the Chief, Hearing Division, by telephone, that the corporation's board of directors had decided not to authorize the filing of exceptions. A copy of the Bureau's motion was mailed to Harvest's counsel and to the secretary-treasurer who filed the purported exceptions, and no response to the motion has been received. Therefore, the purported exceptions will be stricken because they were not authorized by the applicant.

2. Even were the exceptions to be treated by the Board, their rejection would be warranted for failure to comply with the requirements of Section 1.277(a) of the Commission's Rules. The exceptions were also filed late, and it has not been established that good cause for the tardiness was shown.

3. Accordingly, IT IS ORDERED, That the Broadcast Bureau's motion to strike, filed December 27, 1972, IS GRANTED; that the document entitled "Exceptions to the Opinion" filed December 8, 1972, IS STRICKEN; and that the Initial Decision, released November 1, 1972, IS MADE EFFECTIVE.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

[1] FCC 72D–70, released November 1, 1972.

F.C.C. 73R–44

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
STUART K. LANKFORD, GEORGE R. LANKFORD, AND RAY J. LANKFORD, D.B.A. LANKFORD BROADCASTING CO., NEW ALBANY, IND.	Docket No. 18637 File No. BPH–6427
RADIO 900, INC., LOUISVILLE, KY.	Docket No. 18638 File No. BPH–6429
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted January 24, 1973; Released January 31, 1973)

BY THE REVIEW BOARD: BOARD MEMBER BERKEMEYER DISSENTING AND VOTING TO REQUIRE PUBLICATION.

1. This proceeding involves the mutually exclusion applications of Lankford Broadcasting Co. (Lankford) and Radio 900, Inc. (Radio 900) for a construction permit for new FM broadcast stations in New Albany, Indiana, and Louisville, Kentucky, respectively. The applications were designated for hearing by Memorandum Opinion and Order, FCC 69–903, released August 20, 1969. On May 2, 1972, the Administrative Law Judge released an Initial Decision, FCC 72D–26, finding both applicants basically qualified, but granting the Lankford application and denying the application of Radio 900. The decision of the Administrative Law Judge was based upon 307(b) findings and a comparative evaluation of the two applicants. Following issuance of the Initial Decision, on July 3, 1972, Radio 900 filed exceptions to the decision and a request for oral argument which are now pending before the Review Board. Now before the Review Board is a joint request filed by the applicants on December 4, 1972, seeking approval of an agreement looking toward partial reimbursement by Radio 900, in an amount not to exceed $7,250, of expenses incurred by Lankford in preparing, filing and prosecuting its application; dismissal of Lankford's application; and immediate grant of Radio 900's application.[1]

2. The petitioners have complied in all respects with the provisions of Section 1.525(a) of the Commission's Rules. They have furnished affidavits which set forth the exact nature of the consideration involved,

[1] Also before the Review Board for consideration are the Broadcast Bureau's comments on the joint request, filed December 14, 1972; reply of Radio 900, filed December 27, 1972; Radio 900's petition to amend, filed December 27, 1972; and the Broadcast Bureau's comments on the petition to amend, filed January 5, 1973.

the details of the initiation and history of the negotiations, and the reasons why approval of the agreement would be in the public interest.[2] In addition, they have substantiated legitimate and prudent out-of-pocket expenses incurred by Lankford in prosecuting its application which are in excess of the amount to be reimbursed.

3. In their joint request, petitioners contend that publication of the proposed withdrawal of Lankford is not required. In support of this contention, petitioners aver that their proposals are very similar and would serve the same general area,[3] a fact the Commission noted in its Memorandum Opinion and Order, FCC 69–903, released August 20, 1969. Petitioners also point out that Louisville is substantially larger than New Albany,[4] that New Albany has two aural transmission services already licensed to it, and that New Albany presently receives services from several other broadcast stations outside the city.[5] In addition, petitioners claim that the grant of Radio 900's application would preserve the integrity of Section 73.203 of the Rules [6] inasmuch as such a grant would retain a channel in Louisville, a city which has already had one FM channel removed from it.[7]

4. The record reveals that Louisville, Radio 900's proposed station location, and New Albany, the community proposed by Lankford, are geographically contiguous. All areas served by either applicant receive at least five aural services. The record further reveals that a grant of the Radio 900 application would place a city grade signal over all of New Albany and would serve more people than would Lankford,[8] including 98.4% of the population proposed to be served by Lankford. Although Louisville has more transmission services assigned to it, it is a considerably larger community than New Albany, which does have existing transmission services. Under these circumstances, the Board concludes that the approval of the agreement would not unduly impede achievement of fair, efficient and equitable distribution of radio service pursuant to Section 307(b) of the Act and Section 1.525(b) of the Rules, and, therefore, there is no need to require publication of notice of withdrawal of the Lankford application. *Cf. Hess et al.*, 26 FCC 2d 709, 20 RR 2d 945 (1970); *Iroquois County Broadcasting Co.*, 20 RR 2d 455 (1970); *Farm and Home Broad-*

[2] Petitioners contend that approval of the agreement would make unnecessary further protracted proceedings before the Commission and thereby expedite the inauguration of a new FM service in the Louisville/New Albany area.

[3] The population in the common service area represents 98.4% of the population proposed to be served by Lankford and 91% of the population proposed to be served by Radio 900.

[4] In the 1970 U.S. Census, the population of New Albany was 38,402 and the population of the city of Louisville was 361,472 persons.

[5] Two daytime AM stations (WHEL and WREY) and one educational FM station (WNAS–FM) are presently licensed in New Albany. The city of New Albany also receives five FM services and at least two AM primary services both day and night, all of which originate from Kentucky stations.

[6] Section 73.203 of the Rules bars using elsewhere more than one channel listed to any one community.

[7] Louisville has already had one FM channel (Channel 280A), which had been assigned to it in the FM table, removed from it. This channel is presently operated as WSTM–FM, St. Matthews, Kentucky.

[8] Outside of the common area and within the 1.0 mv/m contours, Lankford would serve 10,128 persons in an area of 211 square miles and Radio 900 would serve 64,265 persons in an area of 246 square miles.

casting Co., 14 FCC 2d 162, 13 RR 2d 1078 (1968); and *Vaughn-Hessen Co.*, 2 FCC 2d 474, 6 RR 2d 926 (1966).

5. On December 27, 1972, a petition for leave to amend was filed by Radio 900. The proposed amendment was filed in response to the Broadcast Bureau's comments, filed December 14, 1972, on the petitioners' joint request, in which the Bureau urged that Radio 900 did not appear to have sufficient funds to meet its obligations under its present agreement with Lankford without jeopardizing its financial qualifications.[9] Radio 900's amendment demonstrates that it has sufficient available funds to meet its respective commitments to Lankford and to construct and operate its proposed station for one year without reliance on revenue, and it will be accepted. Inasmuch as the financial question raised by the Broadcast Bureau in its comments has been satisfactorily answered, and because Radio 900 has previously been found qualified to operate its proposed station, the Board concludes that the public interest, convenience and necessity will be served by an immediate grant of Radio 900's application and the dismissal, pursuant to the request of the applicants, of Lankford's application.

6. Accordingly, IT IS ORDERED, That the petition for leave to amend, filed December 27, 1972, by Radio 900, Inc., IS GRANTED and the amendment IS ACCEPTED; that the joint request for approval of partial reimbursement of expenses, filed December 4, 1972, by Radio 900, Inc. and Stuart K. Lankford, George R. Lankford, and Ray J. Lankford, d/b/a Lankford Broadcasting Co., IS GRANTED; that the agreement IS APPROVED; that the exceptions and request for oral argument, filed July 3, 1972, by Radio 900, Inc. ARE DISMISSED; that the application of Lankford Broadcasting Co. (File No. BPH-6427) IS DISMISSED with prejudice; that the application of Radio 900, Inc. (File No. BPH-6429) IS GRANTED; and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

[9] In addition to the amount of $7,250 which Radio 900 would be obligated to pay Lankford under their agreement, Radio 900, pursuant to a joint agreement approved by the Board in an Order, 21 FCC 2d 424, released February 3, 1970, would also be obligated to pay $1,000 to Harrison Radio, Inc., a former applicant in this proceeding, if Radio 900 receives a grant of its application.

F.C.C. 73–87

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of PETITION TO AMEND PART 89 OF THE RULES TO PERMIT THE INSTALLATION OF MOBILE UNITS LICENSED IN THE LOCAL GOVERNMENT SERVICE IN VEHICLES NOT OPERATED BY THE LICENSEE.	Docket No. 19672 RM–1547

NOTICE OF PROPOSED RULE MAKING

(Adopted January 23, 1973; Released January 29, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Northern California Chapter of the Associated Public Safety Communications Officers, Inc., has filed a petition to amend Section 89.257 of the Commission's Rules to permit mobile communications units, licensed in the Local Government Radio Service, to be installed "in any vehicle which requires cooperation or coordination with the licensee." This provision includes "ambulances, water department and public utility service units, lifeguard units, school buses, and vehicles of contractors or other persons or agencies having responsibility for official local governmental activities of the licensee."

2. The petition argues that "the identical corollary need has been recognized and provided for in . . . many other Public Safety Radio Services," i.e., Police, Fire, Highway Maintenance, and Forestry-Conservation, and that it would be in keeping with evolving Commission policy now further to relax these restrictions in the Local Government Radio Service.

3. We have considered the petitioner's request, and have concluded that the public interest would best be served by granting the petition insofar as emergency vehicles and vehicles charged with official governmental activities are involved. This would largely grant the relief asked for by the petitioner, while at the same time, limiting the use of Local Government frequencies to emergency situations, and to communications related to local governmental functions. This limitation would be in keeping with the permissible scope of non-licensee use of radio facilities now provided for in other Public Safety Radio Services. The proposed rule would thus permit installation of mobile units in ambulances, utility emergency vehicles, and other similar vehicles mentioned by the petitioner, with which the licensee may need to communicate during an emergency. Our proposal would further permit the licensee

to install its mobile units in vehicles of contractors performing functions which the licensee might otherwise perform. However, it would not permit the installation of radio units in non-emergency vehicles not performing governmental functions with which the licensee might want to communicate because the latter purpose is not one for which local government frequencies are available.

4. The proposed rule amendment, which is set forth in the attached appendix, is issued pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

5. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before April 6, 1973, and reply comments on or before April 20, 1973. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by the notice.

6. In accordance with the provisions of Section 1.54 of the Commission's Rules and Regulations, the original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 89 of the Commission's Rules is amended as follows:
In Section 89.257, paragraph (b) is added to read:

§ 89.257 Station Limitations

* * * * * * *

(b) Subject to the provisions of § 89.157, communication units of a licensed Local Government Radio Service mobile station may be installed in any vehicle which in an emergency would require cooperation or coordination with the licensee, and in any vehicles used in the performance of official local governmental activities of the licensee. This provision includes ambulances, emergency units of public utilities, lifeguard emergency units, and vehicles of contractors or other persons or agencies performing for the licensee one or more of its local governmental functions.

* * * * * * *

F.C.C. 73-94

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re MAGIC VALLEY CABLE VISION, INC., TWIN FALLS, FILER, AND KIMBERLY, IDAHO and IDAHO VIDEO, INC., JEROME AND GOODING, IDAHO Requests for Waiver of Section 76.93(b) of the Commission's Rules	CSR-223 (IDO30), CSR-224 (IDO28), CSR-225 (IDO29) CSR-226 (IDO24), CSR-227 (IDO23)

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION: COMMISSSIONER JOHNSON CONCURRING IN THE RESULT.

1. Magic Valley Cable Vision, Inc., operates cable television systems at Twin Falls, Filer, and Kimberly, Idaho, and Idaho Video, Inc., operates systems at Jerome and Gooding, Idaho. Each of these systems is located within the predicted Grade B contour of Television Broadcast Station KMVT, Twin Falls, Idaho, and within the Mountain Time Zone. As such, they are presently required to provide KMVT with same-day network program exclusivity, pursuant to Section 76.93(b) of the Commission's Rules and our recent decision in *Idaho Video, Inc.*, FCC 72-1046, —— FCC 2d ——. Magic Valley and Idaho Video have filed a "Petition for Special Relief" seeking waiver of Section 76.93(b) in order to provide simultaneous-only exclusivity to KMVT. The KLIX Corporation, licensee of KMVT, has opposed this petition, and Magic Valley and Idaho Video have replied.

2. In support of their waiver request, Magic Valley and Idaho Video argue that: a) persons in the Twin Falls television market prefer to view network programs at the time that they are broadcast by the Salt Lake City stations rather than at the earlier hours chosen by Station KMVT; b) same-day exclusivity was meant to protect a station's programming only against pre-release by a lower priority station, not against post-release; c) providing simultaneous-only exclusivity will not cause economic injury to KMVT; d) simultaneous exclusivity will cause KMVT only a 33 per cent loss of protected program hours, and e) an evidentiary hearing is required to determine the merits of the waiver request.

3. KMVT is a CBS affiliate that also carries NBC and ABC programming. Network feeds to Salt Lake City are immediately broadcast by KMVT but are broadcast on a one-hour delayed basis by the

Salt Lake City network affiliates. Without same-day exclusivity KMVT alleges that it must either conform to the Salt Lake City programming schedule or risk a loss of viewers to cable systems carrying the Salt Lake City stations. KMVT asserts that conforming to Salt Lake City schedules is undesirable due to the prohibitive cost of adequate tape delay equipment ($120,000) and to the need for independence by Twin Falls viewers from the preferences and interests of Salt Lake City viewers. Further, simultaneous-only exclusivity will reduce KMVT's prime time exclusivity protection by 55 per cent,[1] thus fragmenting a substantial part of an already small audience (40,000 households). Finally, KMVT argues that the petitioners have in the past provided same-day exclusivity without economic injury and retain the technical equipment to continue providing it.

4. We rule on petitioners' waiver arguments as follows: a) the Commission places responsibility for the selection and scheduling of broadcast programming on each broadcast licenses, and will not normally interfere with the exercise of a broadcaster's discretion. In the *Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, the Commission recognized that same-day exclusivity in the Mountain Time Zone would have some impact on viewing habits, but concluded that this form of exclusivity was an adequate compromise of the competing interests; b) the same-day exclusivity rules are meant to apply without regard to the distinction between pre-released and post-released programming. See *Reconsideration of the Cable Television Report and Order, supra*, and *Second Report and Order in Dockets 14895 et al.*, 2 FCC 2d 725; c) in the *Reconsideration of the Cable Television Report and Order, supra*, we determined that, with the exception of Mountain Time Zone television stations licensed to designated communities in the first 50 major television markets, Mountain Time Zone stations are entitled to same-day exclusivity regardless of economic need; d) petitioners provide no supporting data for this assertion, and it is not clear whether it is based on total program hours or some selected time period. We believe that prime time viewing hours should be emphasized in such an analysis, since prime time hours attract more than 60 per cent of each household's total viewing time (Nielsen ratings, November 26, 1972) and account for more than 50 per cent of total network television revenue. While we do not now determine how many hours of protected programming must be lost to warrant denial of a same-day exclusivity waiver request, we rule that in this case a 55 per cent loss of prime time hours is too great to permit a change from same-day exclusivity; and e) petitioners' threshold factual allegations do not persuade us that a hearing is necessary here. E.G., *Wheeling Antenna Company* v. *Federal Communications Commission*, 391 F. 2d 179.

[1] KMVT indicates that during prime time, same-day exclusivity provides 14½ hours per week of protection and simultaneous exclusivity would provide only 6½ hours' protection. It also indicates a protection loss of 11½ hours per week during the 5 p.m. to sign-off hours and 13 hours per week on an all-day basis.

In view of the foregoing we find that grant of the requested waiver of Section 76.93(b) of the Rules would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Special Relief" filed by Magic Valley Cable Vision, Inc., and Idaho Video, Inc., IS DENIED.

IT IS FURTHER ORDERED, That Magic Valley Cable Vision, Inc. and Idaho Video, Inc. SHALL CONTINUE to comply with the requirements of Sections 76.91 and 76.93(b) of the Commission's Rules on their cable television systems at Twin Falls, Filer, Kimberly, Jerome and Gooding, Idaho, respectively.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-89

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
METRO CABLE CO., LOVES PARK, ILL.	CAC-247, IL124
METRO CABLE CO., UNINCORPORATED COMMUNITY OF NORTH PARK, ILL.	CAC-248, IL125
METRO CABLE CO., UNINCORPORATED AREA OF WINNEBAGO COUNTY, ILL.	CAC-249, IL126
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONERS REID AND WILEY NOT PARTICIPATING.

1. On April 24, 1972, Metro Cable Company filed applications for certificates of compliance for new cable television systems to serve Loves Park, the unincorporated community of North Park, and adjacent unincorporated areas of Winnebago County, Illinois (all within the Rockford-Freeport television market, #97). In its application [1] Metro states that it commenced operations on March 30, 1972, and is presently carrying the following television signals:

WCEE-TV (CBS), Freeport, Illinois.
WTVO (NBC), Rockford, Illinois.
WREX-TV (ABC), Rockford, Illinois.
WTTW (Educ.), Chicago, Illinois.
WXXW (Educ.), Chicago, Illinois.
WHA-TV (Educ.), Madison, Wisconsin.

Metro seeks to add two additional signals:

WFLD-TV (Ind.), Chicago, Illinois.
WGN-TV (Ind.), Chicago, Illinois.

Oppositions were filed by CATV of Rockford, Inc., and by Winnebago Television Corp., licensee of Television Broadcast Station WTVO, and Metro replied.

2. In its opposition filed June 2, 1972, CATV of Rockford, Inc., claims, *inter alia*, that Metro could not have been operating prior to March 31, 1972, since two of its technicians investigated Metro's facilities on March 31, 1972, and found them apparently inoperative.

[1] Metro submitted a single "master" application for Loves Park and identical copies for North Park and the unincorporated area of Winnebago County. See Paragraph 111, *Cable Television Report and Order*, 36 FCC 2d 143, 186 (1972). However, there is at least one difference which the application does not point out: Metro has a franchise for Loves Park, but none for North Park or the unincorporated area of Winnebago County since there is apparently no franchise authority for those areas. *See* Paragraph 10, *infra*.

Metro responded that on March 30 its system "was initially energized and began suppling . . . signals."

3. On August 2, 1972, CATV of Rockford, Inc., filed a "Reply to Response of Metro Cable Co. and Petition for Special Relief for Stay of Further Construction and for Immediate Issuance of Order to Show Cause Preceeding Issuance of Cease and Desist Order to Prevent Further Illegal Operations and Violations of the Commission's Rules." Therein, it claims that Metro apparently was not in operation prior to March 31, 1972, and therefore should cease its operations until it receives Commission certification. Rockford submits an affidavit from one of Metro's former construction supervisors stating that it was not possible for signals to have reached subscribers before March 31, 1972, because there was a short circuit present in the system when it was energized on March 30, and that the first date on which signals were delivered to a subscriber was April 4. Metro, in its opposition to Rockford's petition, submits a further affidavit from the same employee stating that his first affidavit was prepared for Rockford while he was applying to them for employment and that he made some incorrect statements at that time. Specifically, he states in the second affidavit that he cannot verify whether or not there was signal on the line before March 31.

4. Based on the record before us, we conclude that Metro was in operation on March 30, 1972, and is therefore grandfathered under the Commission's rules. Metro has affirmatively stated that it was in operation on March 30, 1972, and CATV of Rockford, Inc. has not sufficiently contravened that assertion.[2] Accordingly, we will deny CATV of Rockford, Inc.'s requests that we stay construction and issue an order to show cause preceding issuance of a cease and desist order to halt Metro's operations.

5. Winnebago Television Corp. asserts that Metro offers no channel devoted solely to public access, no channel devoted exclusively to educational access, no government access channel, and no studio or production facilities for public access users.[3]

6. Metro proposes a channel for which public access will be given first priority, but which will also be utilized for local educational programs, technical testing, and leased channel requests. We have no objections to the use of a public access channel for occasional technical testing or leased uses so long as public access users are given top priority. *See* Par. 125, *Cable Television Report and Order*, 36 FCC 2d 143, 191–92 (1972). However, we do not feel that regular use of the public access channel for educational programming is in keeping with

[2] At the most, CATV of Rockford, Inc. raises the question whether the short-circuit which caused disruption of service occurred after a period during which there was service or existed when the cable was installed and thereby prevented any service until it was repaired. However, viewing the facts in the light most favorable to CATV of Rockford, Inc.'s position, we are still inclined to find that the system is grandfathered within the meaning of the rules, since Metro constructed its system over a period of several months and completed all construction and other arrangements to the point where it was ready to deliver broadcast signals to its subscribers on March 30.

[3] Winnebago also argues that we should withhold certification pending the outcome of the *Midwest Video* case. This objection has been rendered moot by the Supreme Court's decision in *United States* v. *Midwest Video Corp.*, 406 U.S. 649 (1972).

our policy that there be "one dedicated noncommercial public access channel available without charge at all times. . . ." Par. 121, *Cable Television Report and Order*, *supra* at 190. Although there may be times when the public access channel is vacant, we feel that regular educational or instructional users will have the effect of discouraging members of the public from asserting their right of access. Consequently, Metro shall not use its public access channel for the educational programs produced by local educational authorities.

7. Similarly, Metro proposes a channel for which local educational authorities will be given priority, but which will also be used to carry the signal of WXXW, a Chicago educational station which broadcasts on a part-time basis with programs designed for in-school instructional viewing. We have stated that "it is our intention that local educational authorities have access to one designated channel for instructional programming and other educational uses." Paragraph 123, *Cable Television Report and Order*, *supra* at 191. Metro states in its application and reply that it will work with local educational authorities to coordinate the availability of channels. We stress that the educational access channel shall be "specifically designated for use by the local educational authorities." Section 76.251(a)(5) of the Rules. If the local educational authorities desire the carriage of some or all of the programs of WXXW on Metro's educational access channel, Metro may comply with the request due to the fact that WXXW is a station which Metro could lawfully carry if it had the channel capacity. However, the local educational authorities may preempt some or all of the WXXW programs when they see fit; the decision is not Metro's.

8. Metro asserts that it will maintain "adequate production and studio equipment for public access use." In addition, Metro plans to provide a bi-directional dual cable from its head-end to the TV studio/auditorium complex of Rock Valley Junior College. We do not require an elaborate description of the equipment available to access users, but require only that the system make a showing that it maintains "at least the minimal equipment and facilities necessary for the production of programming. . . ." Section 76.251(a)(4) of the Rules. Metro has made such a showing.

9. Since Metro asks for certification to add two signals to its existing cable system it need only provide public access and educational access channels. Winnebago Television's objection that Metro does not plan to provide for local government access is not well taken. Metro states that it plans to provide a channel in the sub-low band for local government uses. The signals on this channel will not be available to home subscribers. We do not reach the question of whether such a use fulfills the requirement of 76.251(a)(6) of the Rules, but have no objection to such operations under the present circumstances.

10. Although Metro has a franchise for Loves Park, there is no franchise authority in North Park or the unincorporated area of Winnebago County. Metro has received permission from the Board of

109-026—73——4

County Supervisors for Winnebago County and the State Division of Highways to construct its cable system in the unincorporated areas. Since Metro was in operation prior to March 31, 1972, we will not require the "alternative proposal" discussed in Paragraph 116, *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326, 366 (1972), until March 31, 1977. By letter, CATV of Rockford, Inc., claims that Metro has not taken all necessary steps to procure local authority to string its cables. Metro has responded by stating that, while the blanket permit to string wires is on file with this Commission, Metro does not send us copies of the permits needed every time they run cables across or alongside a road, although, in fact, Metro has received such further permits. We do not wish to become entangled in a dispute over local law regarding permits to string cables across or alongside roads. Metro has been constructing its cable system since January, 1972, and apparently county and township authorities have taken no action to enjoin further construction. From this, we assume that Metro has the appropriate local authority required by our Rules.

In view of the foregoing, we find that a grant of Metro Cable Company's "Application for Certificate of Compliance" (CAC–247, 248, and 249) would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the above-captioned applications for Certificates of Compliance filed by Metro Cable Co. ARE GRANTED except as indicated in paragraphs 5–7 above, and appropriate certificates of compliance will be issued.

IT IS FURTHER ORDERED, That the "Conditional Opposition to Application for Certification," and "Reply to Response of Metro Cable Co. and Petition for Special Relief for Stay of Further Construction and for Immediate Issuance of Order to Show Cause Preceding Issuance of Cease and Desist Order to Prevent Further Illegal Operations and Violations of the Commission's Rules," filed by CATV of Rockford, Inc., ARE DENIED.

IT IS FURTHER ORDERED, That the "Objections to Application for Certification" filed by Winnebago Television Corp., ARE GRANTED to the extent indicated in paragraphs 5–7 herein, and otherwise ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 73-112

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of MID-MICHIGAN BROADCASTING CORP., CLARE, MICH. Requests: 990 kHz, 250 W, DA, Day (Facilities of WCRM(AM))	BP-19,328, BPI-42
MID-MICHIGAN BROADCASTING CORP., CLARE, MICH. Requests: 95.3 MHz, No. 237; 3 kw.; 160 feet (Facilities of WCRM-FM) For Construction Permits	BPH-8241, BPHI-3

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 6, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has before it for consideration the above-captioned and described applications for authority to operate the facilities of WCRM(AM) and WCRM-FM, Clare, Michigan, and a "Petition for Waivers, for Acceptance, and for Special Temporary Authority" filed December 26, 1972, by Mid-Michigan.

2. In its Memorandum Opinion and Order, FCC 72-1020, released November 17, 1972, the Commission denied the applicant's request for temporary operating authority and for waiver of various procedural rules. Applications of Bi-County Broadcasting Corporation, licensee of stations WCRM(AM) and WCRM-FM, for renewal of licenses were designated for hearing in April of 1972. On June 27, 1972, the stations went silent. As pointed out in our previous Memorandum Opinion and Order, Bi-County has agreed to sell Mid-Michigan the stations' equipment for $35,000 and related real estate for $18,940. Upon Commission approval of the arrangement, Bi-County is to surrender its licenses.[1] We refused to sanction this arrangement because we were unable to make the necessary finding regarding the basic qualifications of Mid-Michigan, since there appeared to be serious questions regarding the qualifications of three of Mid-Michigan's four principals. These three individuals had been employed by Bi-County and it appeared that they may have been involved to some

[1] By Memorandum Opinion and Order released November 29, 1972, FCC 72M-1473, Administrative Law Judge Frederick W. Denniston denied Bi-County's renewal applications for lack of prosecution and terminated the proceedings in Docket 19492. This order was reaffirmed by Memorandum Opinion and Order released December 27, 1972, FCC 72M-1582.

extent in the alleged falsification of logs by the stations' general manager.

3. On December 22, 1972, Mid-Michigan amended its applications to reflect that the three principals involved were no longer stockholders or had any other connection with the proposed new operation. In light of this development, the Commission's reservations are no longer applicable.

4. Having examined the applications anew, we find, pursuant to section 309(f) of the Communications Act of 1934, as amended, that a grant of the applications is authorized by law except for the proscription of 309(b) of the Act [2] and that extraordinary circumstances exist requiring emergency operation in the public interest in order to restore the only local broadcast services to the town of Clare, Michigan. Accordingly, we will grant temporary emergency authorization for a period not exceeding 90 days.

5. In order to pave the way for early consideration of permanent authorization for the community, we are also waiving the procedural rules barring acceptance of Mid-Michigan's proposals. Finally, a public notice will be issued establishing a standard broadcast "cut-off" date and inviting other parties to file for the facilities.

6. Accordingly, IT IS ORDERED, That the "Petition for Waivers, for Acceptance and for Temporary Authority" filed by Mid-Michigan Broadcasting Corporation IS GRANTED; that sections 1.516(c), 1.571(c), and note 2 to 1.571 ARE WAIVED; and that the above-captioned applications ARE ACCEPTED for filing.

7. IT IS FURTHER ORDERED, That, pursuant to section 309(f) of the Communications Act of 1934, as amended, temporary authority to operate the facilities of stations WCRM(AM) and WCRM-FM IS HEREBY GRANTED Mid-Michigan Broadcasting Corporation for a period of 90 days beginning on the date of the release of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[2] Section 309(b) precludes the Commission from granting an instrument of authorization in the broadcast service until 30 days after public notice of its acceptance for filing. Section 309(f) provides an exemption from this requirement provided a grant is otherwise authorized by law.

F.C.C. 73-118

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of the Application of MID-TEXAS COMMUNICATIONS SYSTEMS, INC. For Issuance of Tax Certificate for Sale of KBC Corporation Pursuant to Section 64.601 of the Commission's Rules.	File No. CCTAX-1-73

MEMORANDUM OPINION, ORDER AND CERTIFICATE

(Adopted January 31, 1973; Released February 2, 1973)

BY THE COMMISSION:

1. In Docket 18509, we adopted Section 64.601 of the Commission's Rules which, among other things, prohibits telephone common carriers subject to the Communications Act of 1934, as amended, to engage in the furnishing of cable television service to the viewing public within their telephone service areas either directly or indirectly through an affiliated company, and which requires divestiture on or before March 16, 1974 where necessary to eliminate such existing proscribed cross-relationships when cable television service was being furnished to the viewing public on or before May 1, 1970.[1] As we have previously noted in connection with adoption of other cable television cross-ownership rules, such divestitures may be effected without payment of capital gains tax if the "involuntary conversion" provisions of the Internal Revenue Code are applicable.[2]

2. Section 1071(a) of the Internal Revenue Code provides, in pertinent part, that:

> If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of section 1033. . . . (26 U.S.C. 1071)

3. Now before us is an application, requesting the issuance of such a certificate pursuant to Section 1071 of the Internal Revenue Code, filed by Mid-Texas Communications Systems, Inc. (Applicant) on November 21, 1972. Applicant is engaged in the business of providing land-line common carrier telephone services, through its subsidiary Mid-Texas Telephone Company, to Killeen, Harker Heights, Belton

[1] *Section 214 Certificates*, 22 FCC 2d 746 (1970); affirmed *General Telephone Company of the Southwest* v. *United States*, 449 F. 2d 846 (1971).
[2] *CATV*, 23 FCC 2d 816, 822 (1970).

and Copperas Cove, Texas. Prior to March 27, 1972, Applicant also owned and operated cable television systems in said communities through another subsidiary, KBC Corporation. On that date, Applicant sold all of the stock of KBC Corporation to Daniels Properties, Inc., doing business as CableVision Properties, Inc., in order to comply with Section 64.601 of our Rules proscribing cross-ownership of operating telephone and cable television companies within the same communities.

4. In authorizing the extension of KBC Corporation's Killeen cable television system to the adjacent community of Harker Heights on January 29, 1971, the Commission found that the Killeen system commenced operations on December of 1964.[3] It also appears that KBC Corporation's cable television systems in Copperas Cove and Belton, Texas were in service in May and September of 1966, respectively.[4]

5. A divestiture of either the telephone or cable television operations of Applicant's subsidiary companies in the above-mentioned communities, in compliance with the requirements of new Section 64.601, is clearly "necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy" by the Commission with respect to the direct or indirect furnishing of cable television service to the viewing public by a telephone company within its telephone service area.

We previously have found that the term "radio broadcasting stations" within the meaning of Section 1071 of the Internal Revenue Code refers also to cable television systems and that Section 1071 may appropriately be applied to divestitures of cable television systems.[5]

6. Accordingly, IT IS ORDERED, That the application of Mid-Texas Communications Systems, Inc. File No. CCTAX-1-73, IS, HEREBY, GRANTED and that the tax certificate appended hereto be issued to Mid-Texas Communications Systems, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE INTERNAL REVENUE CODE (26 U.S.C. 1071)

Mid-Texas Communications Systems, Inc. has reported to the Commission the sale, on March 27, 1972, of all of the stock of KBC Corporation, formerly a subsidiary corporation of Mid-Texas, to Daniels Properties ,Inc., d/b/a CableVision Properties, Inc., of Denver, Colorado, to effectuate compliance with Section 64.601 of the Commission's Rules with respect to the direct or indirect furnishing of cable television service to the viewing public by a telephone company within its telephone service area.

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[3] *In the Matter of KBC Corporation*, File No. W602-4.
[4] See Annual Reports of KBC Corporation (FCC Form 325) on file with the Commission.
[5] *See Cosmos Cablevision Corp.*, 33 FCC 2d 293, 295 (1972) and *Viacom, Inc.*, 38 FCC 2d —— (1972).

IT IS, HEREBY, CERTIFIED That the sale was necessary or appropriate to effectuate the Commission's new rule and policy prohibiting a telephone common carrier from directly or indirectly furnishing cable television service to the viewing public within its telephone service area, and in particular, to effectuate compliance with the provisions of Section 64.601 of the Commission's Rules, adopted April 22, 1970 and released April 24, 1970, in Docket 18509, 22 FCC 2d 746.

This certificate is issued pursuant to the provisions of Section 1071 of the Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this first day of February, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-61

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
SALEM BROADCASTING CO., INC., SALEM, N.H.	Docket No. 19434
	File No. BP-18325
NEW HAMPSHIRE BROADCASTING CORP., SALEM, N.H.	Docket No. 19435
	File No. BP-18479
SPACETOWN BROADCASTING CORP., DERRY, N.H.	Docket No. 19436
For Construction Permits	File No. BP-18492

MEMORANDUM OPINION AND ORDER

(Adopted February 2, 1973; Released February 6, 1973)

BY THE REVIEW BOARD:

1. Section 1.106(a) of the Commission's Rules declares, in effect, that petitions for reconsideration of interlocutory rulings of the Review Board will not be entertained. Salem Broadcasting Co., Inc. and New Hampshire Broadcasting Corporation jointly request a waiver of this rule to permit the Board to reconsider its action of November 22, 1972, adding a series of issues based on Section 73.37 of the Rules.[1] The Board can find no justification for waiver in the petition before it. Certainly, there is no similarity between the facts cited in support of waiver here and those which lead the Board to reconsider in *Naugatuck Valley Service, Inc.*, 3 FCC 2d 642 (1966), cited by petitioners. The argument that Section 73.37 is only applicable in deciding whether or not an application is acceptable for filing was made when the petition to enlarge was first before the Board, it was considered in detail at that time, and the reasons for rejecting it were explained. Finally, petitioners' disagreement with the Board's interpretation of population data in the course of deciding whether to add the issue is not a valid basis for waiver of the rule. The place to resolve the question of Salem's population is at the hearing, not in repeated arguments before the Board.

2. Accordingly, IT IS ORDERED, That the petition for waiver of Section 1.106(a) of the rules and for reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

[1] 38 FCC 2d 170, released November 22, 1972. The joint petition was filed November 30, 1972; Spacetown Broadcasting Corporation and the Broadcast Bureau filed their oppositions December 11, 1972; the petitioners replied on December 21, 1972.

F.C.C. 73-130

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
CHARLES O. POTTER, ESQ.
against
KVAL-TV, KEZI, AND KPNW OF EUGENE, OREG.

ORDER

(Adopted January 31, 1973; Released February 2, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS CONCURRING IN THE RESULT.

1. The Commission has before it an Application for Review filed on July 26, 1972 by Charles O. Porter, Esq., of the ruling of the Broadcast Bureau of June 28, 1972, 35 F.C.C. 2d 664 (1972).

2. We have examined the pleadings herein and believe that the Bureau's ruling was correct. Accordingly, pursuant to Section 1.115(g) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R-400

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTH CAROLINA EDUCATIONAL TELEVISION COMMISSION (WITV), CHARLESTON, S.C. STATE TELECASTING CO., INC. (WUSN-TV), CHARLESTON, S.C. FIRST CHARLESTON CORP. (WCIV-TV), CHARLESTON, S.C. WCSC, INC. (WCSC-TV), CHARLESTON, S.C. For Construction Permits	Docket No. 18569 File No. BPET-323 Docket No. 18570 File No. BPCT-4107 Docket No. 18571 File No. BPCT-4121 Docket No. 18572 File No. BPCT-4127

APPEARANCES

R. Russell Eagan, *Aloysius B. McCabe*, and *Theodore A. Shmanda*, on behalf of South Carolina Educational Television Commission (WITV) and WCSC, Inc. (WCSC-TV); *Joseph F. Hennessey*, on behalf of State Telecasting, Co., Inc. (WUSN-TV); *Howard F. Roycroft*, on behalf of First Charleston Corporation (WCIV), parties applicant; *Ben C. Fisher* and *James V. Dunbar, Jr.*, on behalf of Cosmos Broadcasting Corporation (WIS-TV); *Michael S. Horne*, on behalf of Palmetto Radio Corporation; *David R. Anderson*, on behalf of Columbia Television Broadcasters, Inc. (WOLO-TV), parties respondent and/or intervenors; and *John F. Reilly* and *Joseph Chachkin*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted December 19, 1972; Released January 2, 1973)

BY THE REVIEW BOARD: BOARD MEMBER NELSON CONCURRING WITH STATEMENT. BOARD MEMBER PINCOCK DISSENTING WITH STATEMENT.

1. This proceeding involves the joint proposal of South Carolina Educational Television Commission (WITV), State Telecasting Co., Inc. (WUSN),[1] First Charleston Corporation (WCIV) and WCSC, Inc. (WCSC), licensees of VHF television broadcast stations in Charleston, South Carolina, to move their respective transmitter sites from separate locations to a joint tower located approximately twenty-

[1] By Memorandum Opinion and Order, 31 FCC 2d 156, 22 RR 2d 711 (1971), which was released subsequent to the Initial Decision, the Review Board approved the substitution of State Telecasting Co., Inc. (State Telecasting) for Reeves Telecom Corporation (WUSN); the substitution became effective on September 1, 1971.

one miles northwest of Charleston.[2] Administrative Law Judge James F. Tierney released an Initial Decision, FCC 71D–19, on April 23, 1971, in which he concluded that the joint application must be denied since a grant would have a significant adverse impact on existing and/or prospective UHF stations in the Columbia and Florence, South Carolina, areas, and an undetermined but lesser effect on other present and/or prospective UHF stations at Wilmington, North Carolina, and Savannah and Augusta, Georgia.[3] Exceptions and a brief in support thereof were filed by the joint applicants. The Review Board has considered the Initial Decision in light of the exceptions and briefs, its examination of the record, the arguments of the parties [4] and the recent substitution of State Telecasting for WUSN.[5] The Presiding Judge's findings of fact are thorough and accurate in all significant respects. With minor exceptions, the joint applicants challenge the Presiding Judge's inferences and conclusions of law, rather than his findings. Consequently, except as modified herein and in the rulings contained in the attached Appendix, the Presiding Judge's findings of fact are adopted. Although the Board does not agree with the Presiding Judge that a denial of the joint application could be predicated at least in part on the impact which would be occasioned by the tall tower proposal in the Columbia, South Carolina, and, to a limited extent, Wilmington, North Carolina, and Augusta and Savannah, Georgia, markets, the Board is in full agreement with the Presiding Judge's conclusions with respect to the Florence market and with his ultimate determination. Thus, in the Board's view, the Florence, South Carolina, market is the critical or decisional market, and, in our view, the Charleston tall tower proposal would cause substantial adverse UHF impact in that market. In view of the extensive arguments advanced by both the joint applicants and respondents, however, some amplification of the Presiding Judge's conclusions in this regard is required.

2. The decisional standards applicable to the UHF impact policy are well established and not seriously in dispute. Briefly stated, rather than attempting to guarantee the absolute success of UHF television broadcast stations, the Commission seeks to protect and encourage

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[2] By Memorandum Opinion and Order, 18 FCC 2d 328, 16 RR 2d 725 (1969), the Commission designated the joint applications for hearing under a UHF impact issue. Subsequently, the Board added a *Suburban* issue with respect to the three commercial VHF stations involved in the joint proposal (FCC 69R–442, 20 FCC 2d 342). By various actions of the Commission and Presiding Judge three currently-existing party respondents were named to the proceeding—Palmetto Radio Corporation (WNOK–TV) and Columbia Broadcasting, Inc. (WOLO–TV), licensees of Columbia, South Carolina, UHF Stations WOLO and WNOK, and Cosmos Broadcasting Corporation, licensee of VHF Station WIS–TV, Columbia, South Carolina.

[3] Additionally, the Presiding Judge favorably resolved the outstanding *Suburban* issue with respect to the four original applicants.

[4] Oral argument was held before a panel of the Review Board on September 21, 1972.

[5] In its Memorandum Opinion and Order, 31 FCC 2d 156, *supra*, permitting the substitution of State Telecasting Co., Inc., the Board held in abeyance action on a petition to reopen and immediately close the hearing record, filed June 15, 1971, by State Telecasting, seeking to introduce a new *Suburban* showing. The petition was opposed by the respondents on various grounds, including, *inter alia*, the contentions that they should be accorded hearing rights with regard to the new *Suburban* showing and the effect of the substitution on the UHF impact issue. Since State Telecasting has assumed the technical proposal of WUSN, we fail to see the significance of the substitution on the UHF impact issue; and, in light of our determination to deny the application under the UHF impact issue, we need not and do not reach the *Suburban* issue. State Telecasting's petition to reopen will therefore be dismissed.

UHF television as much as possible without, at the same time, foreclosing possible advantages to the public which may be achieved by the improvement of VHF service.[6] When these policies come into serious conflict, however, as they do in this instance, the Commission has determined that the UHF protection policy must prevail. Application of these principles has resulted in the Commission's consistent refusal to grant applications of VHF stations to expand their coverage areas when the effect would be detrimental to present or prospective UHF development. Thus, in an effort to preserve a realistic potential for UHF growth, the Commission has made a judgment that where proposed VHF expansion is likely to seriously jeopardize the development of UHF broadcasting, the "paramount policy of fostering UHF service would more than offset the policy of encouraging VHF stations to provide the best possible service to the largest number of persons. . . ." [7] The UHF protection policy is not without limitation, however; where only minimal, rather than substantial, UHF impact is shown, Commission policy does not require denial of an application to improve the operation of an existing VHF station, especially where substantial service benefits would be achieved by a grant of the VHF application.[8] Application of these guidelines to the Florence market leads us, as it did the Presiding Judge, to two necessary conclusions: first, that the Florence market has a realistic potential for UHF development; and second, that grant of the Charleston tall tower proposal would forestall or obviate this potential. In our view, as in the Presiding Judge's, these judgments are fully supported by the facts of record.

3. Of necessity, any judgment concerning the probable future development of a television market is to some extent based on forecasts and reasonable inferences drawn from the record evidence, rather than on hard or positive proof. In our view, the respondents, both by direct and circumstantial evidence, have provided a sufficient basis for the judgment that there is a reasonable and realistic likelihood of UHF development in Florence, given the denial of the instant proposal. Although the joint applicants take issue with this conclusion on several grounds, we nevertheless, are persuaded that they have failed to meet their burden of proof under the issue in this vital respect.

4. The primary basis for concluding that there is a realistic potential for UHF development in Florence is the existence of a significant "hole" in ABC viewing in the counties which constitute the Florence market. The Florence Area of Dominant Influence (ADI),[9] which

[6] See *Atlantic Telecasting Corp.* (*WECT*), 3 FCC 2d 442, 7 RR 2d 297 (1966), affirmed *sub nom. Lee* v. *FCC*, 126 U.S. App. D.C. 45, 374 F. 2d 259, 8 RR 2d 2111 (1967); *Cosmos Broadcasting Corporation* (*WSFA–TV*) 21 FCC 2d 729, 18 RR 2d 538 (1970), remanded on other grounds 28 FCC 2d 630 (1970).

[7] *WLVA, Inc.* v. *FCC*, —— U.S. App. D.C. ——, —— F. 2d ——, 23 RR 2d 2081 (1972); *Daily Telegraph Printing Company*, FCC 72R–270, 36 FCC 2d 4, 24 RR 2d 877 (1972).

[8] See *Cosmos Broadcasting Corporation* (*WSFA–TV*), *supra; cf. Atlantic Telecasting Corp.* (*WECT*), *supra.*

[9] ADI is an American Research Bureau concept referring to all counties within the total survey area of a television market in which the viewing hours are dominated by the station(s) in that market; each county in the nation is assigned to only one ADI.

consists of seven counties, is primarily reflective of the operation of VHF Station WBTW, which is located in Florence;[10] in addition to the CBS coverage provided by WBTW, Florence receives extensive NBC service from Station WIS–TV in Columbia, South Carolina, and Station WECT–TV in Wilmington, North Carolina. In contrast, there is very little ABC service received in the market. Assuming activation of either of the two available UHF channels in Florence, operating with an ABC affiliation and facilities comparable to those of former Florence permittee WPDT, a substantial portion of the ABC white area in the Florence vicinity would receive a first ABC service.[11] We believe that the existence of this "white area", absent some material evidence to the contrary, presupposes a realistic potential for UHF development in Florence.[12] In contrast, the joint applicants have presented evidence of a generalized and, in the main, conclusory nature; for example, the joint applicants broadly argue that even if the Charleston tall tower proposal were to be denied, the Florence market would remain of small dimensions and incapable of supporting a second commercial station for some time, because of its relatively small size and its proximity to larger television markets which surround it. Clearly, this evidence, albeit bolstered by opinion testimony concerning the development of several adverse trends generally affecting UHF viability, lacks "direct, specific factual data, the type of pertinent and relevant material required for it to prevail in the *ad hoc* resolution of the impact issue." *WHAS, Inc.* (*WHAS–TV*), 4 FCC 2d 724, 8 RR 2d 475 (1966), affirmed as modified FCC 66–1159, 8 RR 2d 1214; *Cosmos Broadcasting Corporation* (*WSFA–TV*), *supra.*

5. An ABC affiliation is critical to any prospective UHF facility in Florence; clearly, it is a *sine qua non* of such an operation. There is dispute among the parties, however, as to the likelihood of any Florence UHF securing an ABC affiliation. Contrary to the assertions of the joint applicants, it is not incumbent upon the respondents to demonstrate that an affiliation is an absolute certainty in the event that the tall tower proposal were to be denied. Rather, as we believe the respondents have done, they must show that there is a reasonable likelihood of obtaining the affiliation given denial of the instant proposal. The existence of an ABC white area in the market is, in our view, a *prima facie* showing that this is a reasonable likelihood.

6. In this connection, we believe that the circumstances surrounding the cancellation of UHF permittee WPDT's construction permit in

[10] Four channels are allocated to Florence. In addition to WBTW, WJPM, a non-commercial educational channel, operates on Channel 33; UHF Channels 15 and 21 are presently both idle.

[11] The ABC white area in the Florence market, according to respondents, contains approximately 130,000 persons within 1,730 square miles.

[12] It is interesting to note that the combined ABC affiliates which presently serve portions of the market achieve a fairly low quarter-hour viewing share; for example, they garner a scant 4.4% share in the home county of Florence and but a 9.5% share in the entire ADI. Thus, it not only appears reasonable to conclude that the white area would be a ready market for an ABC-affiliated UHF, but also that there is a definite potential for increased ABC service to those areas which presently receive distant ABC signals within the market.

1969 [13] shed some light on the prospects of a Florence UHF securing an ABC affiliation. In conjunction with its second request for extension of time within which to construct in 1968, WPDT advised the Commission that it wished to prosecute its application and stated that it had previously received assurance of an affiliation with ABC, but that such assurance had been withdrawn when ABC's Charleston affiliate had filed an application which, if granted, would permit it to place a Grade B signal over Florence for the first time.[14] Despite the variety of obstacles with which WPDT was faced in 1969, the permittee indicated to the Commission that it was willing to make an unequivocal commitment to build its proposed station, but for the pendency of the Charleston tall tower proceeding. Although the permittee's assessment of its competitive situation at that time did not constitute sufficient grounds for grant of a further extension of time, we do not believe that the cancellation indicates, as the applicants argue, that there was then, or is now, no realistic potential for or interest in UHF development in the Florence market. Rather than determining the fate of one particular permittee as in *Radio Longview, Inc., supra*, we believe that the outcome of this proceeding will affect any or all UHF potential in Florence. In short, we are of the view that the entire prospect for UHF development in Florence is threatened by the intrusion of the three Grade B VHF signals,[15] where one is a well established ABC affiliate, seeking to serve a substantial portion of the ABC white area in the Florence market.

7. Accordingly, IT IS ORDERED, That the petition to reopen and immediately close the record, filed June 15, 1971, by State Telecasting Co., Inc., IS DISMISSED as moot; and

8. IT IS FURTHER ORDERED, That the joint application of South Carolina Educational Television Commission (WITV) (BPET–323), State Telecasting Co., Inc. (WUSN–TV) (BPCT–4107), First Charleston Corporation (WCIV) (BPCT–4121) and WCSC, Inc. (WCSC–TV) (BPCT–4127), IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
DONALD J. BERKEMEYER, *Member, Review Board.*

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[13] On November 17, 1965, the Commission granted a construction permit to Rovan Television, Inc. for operation of UHF station WPDT on Channel 15 in Florence; subsequently, in *Radio Longview, Inc.*, 19 FCC 2d 966, 16 RR 2d 1026 (1969), the construction permit was cancelled on the grounds that the permittee's failure to construct was due to its own independent assessment of the competitive situation and not to circumstances beyond its control.

[14] More important, the Charleston ABC affiliate would provide a first ABC service to 1,425 square miles within which 145,517 persons reside.

[15] As noted by the Presiding Judge, all three Charleston VHF stations would, if their proposal were to be granted, provide service to approximately 40% of the Florence UHF's Grade B contour. The intrusion of three additional Grade B signals in this market, regardless of network affiliation, would make, as the Presiding Judge concluded, any realistic prospect for successful UHF development highly unlikely.

APPENDIX

Rulings on Exceptions of South Carolina Educational Television Commission, State Telecasting Co., Inc.,* First Charleston Corporation, and WCSC, Inc. to Initial Decision

Exception No.	*Ruling*
1, 6, 27	*Denied.* The Presiding Judge's findings accurately and adequately reflect the record.
2, 26, 28	*Granted.* WITV's recent move to the present WCSC–TV tower was undertaken as an interim measure pending the outcome of this proceeding.
3	*Granted.* The Board notes the following affiliations:

Station:	*Network Affiliation*
WSOC–TV	NBC
WBTV	CBS
WGHP	ABC
WCCB–TV	ABC

4	*Granted.* Scotland County, North Carolina, is one of seven counties which compose the Florence ADI.
5	*Granted.* Respondents do not claim that the proposed increase in the Charleston facilities will have any adverse impact on fifteen out of twenty Grade B gain counties resulting from the 1968–1969 improvements in the facilities made by Columbia UHF Stations WOLO–TV and WNOK–TV. These 15 counties account for 64.4% of WNOK's recent Grade B population gain (97,119 out of 150,745) and 63.5% of WOLO's recent Grade B population gain (107,970 out of 170,034).
7	*Granted.* The increased or new overlap between the proposed augmented Charleston stations and the present, proposed and prospective UHF stations in the Wilmington, North Carolina, and Augusta and Savannah, Georgia, markets would be slight, ranging from 5 to 7%. Moreover, the distances between Charleston and the three markets are great (152 miles from Wilmington, 127 miles from Augusta, and 83 miles from Savannah); additionally, there is no record showing of any propinquity between Charleston and these markets which would suggest that viewers in these markets would be drawn or attracted to a distant Grade B signal from Charleston.
8	*Granted.* Respondents do not claim that the Charleston tall tower proposal would have any meaningful impact on UHF audiences in the four Columbia ADI counties of Lexington, Richland, Kershaw and Fairfield, which collectively contain 69% of the TV homes in the Columbia market.
9	*Granted* to the extent that the audience shares credited to the two Columbia UHF stations in Sumter, Lee, Orangeburg, Calhoun and Clarendon Counties are *de minimus;* and *denied* in all other respects as not decisionally significant.
10, 12, 20	*Granted.* The economic testimony in this respect is conclusory and unsubstantiated opinion evidence.
11	*Granted.* At present the major sources of revenue for WOLO–TV and WNOK–TV are the Columbia ADI counties of Lexington and Richland.
13	*Denied* as not decisionally significant. See paragraphs 5 and 6 of this Decision.

*See Footnote 1 of the Decision, *supra.*

14 ---------- *Granted.* The Board is of the view that the Presiding Judge erred in concluding that the opinions of the objectors' economic expert warrant "guarded endorsement". Rather, in very large measure, the opinions are based upon unfounded factual and statistical assumptions, which are controverted in substantial respects by admissions on cross-examination, the economic evidence presented by the joint applicants and the record evidence. In sum, the economic expert's theories lack probative value.

15, 21, 23, 25, 42, 51, 53, 56, 57. *Denied* as not decisionally significant.

16 ---------- *Granted.* The findings excepted to are without record support.

17 ---------- *Granted.* Particularly with regard to local advertisers, factors other than ADI ranking and composition significantly affect advertising patterns.

18---------- *Granted in substance.* In order to shift one or more of the five allegedly "critical counties" from the Columbia to the Charleston ADI, the Charleston VHF stations must divert a sufficiently large percentage of viewers from the Columbia stations to achieve a preponderance of viewing within a county. The counties of Sumter, Lee, Orangeburg and Calhoun would be assigned to the Columbia ADI even if the two UHF stations were not in existence (Clarendon County became part of the Charleston ADI in 1969; there is no record evidence indicating that there is any real possibility that the county would shift back to the Columbia ADI given the denial of the tall tower operation). Thus, the Charleston stations, particularly WCIV, the NBC-affiliated station, must chip away WIS' dominance in each county in order to achieve a shift. However, WIS is a formidable competitor in a variety of ways in comparison with all three Charleston stations, particularly WCIV. For example, WIS covers the entire four-county area with a Grade B or better signal; in contrast, the Charleston stations would cover varying proportions of the population of each county (from 33% in Lee County (WUSN) to 94% in Sumter County (WCIV and WCSC)). Additionally, WIS has a well-established and substantial network audience share, accounting for most, if not all, of the NBC audience share in each county. The strength of this network share is reinforced by the fact that Columbia has a greater community of interest with each county than with the more distant Charleston. Based on these considerations, the Board is not convinced that WCIV's prospects of gaining a significant increase in NBC network share at the expense of WIS are great. Accordingly, we are not convinced of the probability of any, let alone all four, counties shifting to the Charleston ADI. As a consequence, the estimate of loss of advertising revenue which supposedly would flow from slippage of all four counties from the Columbia ADI as a result of audience loss to WOLO and WNOK is totally without merit. One additional matter remains to be considered; Dr. Selden's analysis regarding probable loss of audience share in the four "critical" counties fails in one essential respect; the expert failed to consider the full range of competition which exists in the Columbia ADI; rather than the

two-sided competition which he apparently envisioned, there would be at least three affiliates of ABC or CBS competing for network shares in three out of four of the "critical" counties. This error, we believe, is fatal to his analysis.

19	*Granted* in part and *denied* in all other respects as not decisionally significant. 69% of the Columbia ADI TV homes are located in the four counties of Lexington, Richland, Kershaw and Fairfield. The economic situation of both WOLO and WNOK stems primarily from their inability to redress their competitive imbalance vis-a-vis WIS in the major portion, as well as in the principal community, of the market, rather than in the more competitive fringe counties which respondents urge are critical. See Ruling 5, *supra*. Also see *Daily Telegraph Printing Company, supra*.
22, 43, 44, 48	*Granted in substance.*
24	*Granted in substance.* See Ruling on Exception 18, *supra*. Additionally, the Board notes that the respondents' economic consultant failed to consider the significant presence of and competitive implications of ABC and CBS signals primarily from Augusta, Georgia, and Florence, South Carolina, in the five allegedly "critical" counties.
29	*Granted in substance.* Operating as proposed, WITV would reach 386 schools with enrollment of some 200,000 students. 228 of the 386 schools are located within WITV's authorized Grade B contour, operating from the WCSC tower. (98 schools are reached by WITV under its present mode of operation.) Of these 158 additional schools, 24 would receive a first educational television service. In terms of population alone, grant of the joint proposal would result in a first non-commercial educational service gain of 108,945 persons in 2,978 square miles when compared to WITV's present mode of operation, and 22,085 persons in 458 square miles when compared to the interim coverage provided by the modified construction permit.
30	*Granted.* See Rulings 2, 28 and 29, *supra*.
31, 32, 33	*Denied* as moot in light of the Board's adverse resolution of the UHF impact issue.
34	*Granted.* See Ruling 7, *supra*.
35, 39, 55	*Denied* as being of no decisional significance in light of our conclusion that the proposed operation would result in substantial UHF impact in the Florence market.
36	*Granted.* See Rulings 7 and 34, *supra*.
37, 45, 50, 52, 54	*Denied* to the extent and for the reasons given in this Decision.
38	*Granted.* The factors cited would appear to indicate some, albeit not substantial adverse impact.
40, 41, 47, 49	*Granted.* The conclusions are speculative and controverted by the record evidence. See Ruling 18.
46	*Granted in substance.* See paragraph 2 of this Decision.

CONCURRING STATEMENT OF BOARD MEMBER JOSEPH N. NELSON

I concur in the *result* reached in the Decision denying the joint applications on the ground that, in the words of the issue framed herein, a grant of said applications "would impair the ability of authorized and prospective UHF television broadcast stations in the area to compete effectively, or would jeopardize, in whole or in part,

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the continuation of existing UHF television service." Thus, since the Commission did not limit its interest in UHF television service solely to existing stations but included, specifically, "authorized and prospective" stations, I would add to the impact that would accrue to Florence the additional impact that would accrue to Columbia and other communities. *WLCY–TV, Inc.*, 16 FCC 2d 506, 516, 517, 16 RR 2d 642, 655, 656 (1969), pet. rev. den. 25 FCC 2d 832, 20 RR 2d 342 (1970), pet. recon. den. 28 FCC 2d 353, 21 RR 2d 572 (1971).

In my view, based upon the record evidence, a significant and substantial showing has been made that grant of the Charleston tall tower proposal also poses a serious threat to effective UHF competition in the Columbia, South Carolina, market. In short, grant of the instant application would foreclose the development of Columbia commercial UHF Stations WOLO–TV and WNOK–TV as effective competitors within their only realistic area of potential competitive expansion, namely, the Columbia Area of Dominant Influence. It is clear that the proposed transmitter site moves of the Charleston VHF stations to a tower located 21 miles from Charleston contemplates a substantial increase in Grade B overlap with the Columbia UHF stations, namely, from the existing overlap range of between 5 and 6% of the Grade B service area to the proposed overlap of between 22 and 24% of the Grade B area. Particularly significant is the fact that this expanded overlap would be concentrated primarily in five counties, four of which comprise one-half of the constituent counties of the Columbia ADI. If the two Columbia UHF stations are to succeed at all, it is obvious that it must be within their primary sphere of influence, the Columbia ADI, which the Charleston proposal now threatens to a substantial degree. To argue that the audience market in these counties is already fractionalized because of existing competing network signals obscures the inescapable fact that any additional, directly duplicative network competition will diminish the audience potential for the two UHF stations. Moreover, the expansion would serve to quite literally "waste" the effect of the UHF stations' recent expansion in facilities and their resultant success in gaining audience in these counties. In my view, the further intrusion of three Charleston VHF signals, two of which would be in direct competition with WOLO–TV and WNOK–TV for network shares, not only would diminish the recent audience gains made by the UHF's within the Columbia ADI, but, additionally, would render their recent efforts to achieve some semblance of parity with Columbia VHF Station WIS an exercise in futility.

Reference must be made to the fact that UHF Channel 35 is allocated to Columbia (the capital of South Carolina and the seat of Richland County) and that non-commercial educational Station WRLK–TV is being operated therein by the South Carolina Educational TV Commission. Thus, it would appear that Columbia, the main source of information concerning state and county activities, is a place of particular significance with respect to television program-

ming. The Grade B contour of WRLK–TV is nearly identical with those of the other two UHF stations in Columbia whose radial reach varies between 49 and 54 miles. Accordingly, there exists a common UHF audience and the adverse effects on any one UHF station in Columbia will, in some form, be felt by the others. The record sets forth the alleged financial and operating benefits which would accrue to educational applicant, WITV, Charleston, also licensed to the above Commission; however, no effort was made to show the detriments, if any, which might be suffered by WRLK–TV by the proposed move of the Charleston stations. Obviously, the above educational Commission must have decided in favor of the Charleston station; however, it is the FCC which must make the ultimate public interest finding and this it is unable to do in the absence of record evidence. In *WLCY–TV, supra*, adverse UHF impact was found despite the fact that two UHF stations supported the proposed move of a VHF station which had agreed to permit said UHF stations to use the proposed tower under financially attractive conditions. See also *Aiken Cablevision, Inc.*, 12 FCC 2d 727, 730, 13 RR 2d 936, 940 (1968), wherein the Board disallowed a private agreement in a Section 74.1107 CATV case, noting that "the relevant considerations at hearing transcend the private rights of any individual broadcasters."

Finally, on the question of the degree, if any, to which the Commission's encouragement of UHF is alleged to have sagged, reference must be made to its views set forth recently in *WLCY–TV, Inc.*, FCC 72–994, released November 17, 1972. In that Opinion, the Commission referred to its 1961 precedent-setting case of *Triangle Publications* and stated:

> **The Commission's longstanding UHF impact policy arose out of a realization that the development of a viable system of UHF broadcasting would not occur without providing protection against VHF stations. *Triangle Publications, Inc.* v. *FCC*, 291 F 2d 342 (1961). *WLVA, Inc.* v. *Federal Communications Commission*, 23 RR 2d 2081. The Commission's desire to foster the development of UHF broadcasting is well known and there has been no basic change in this policy. . . .**

And later in that Opinion, the Commission again stated:

> **As recently as March 1971, in *WLCY–TV, Inc. Docket No. 17051*, 28 FCC 2d 353, the Commission stated its policy with respect to UHF development had not changed, and that until 'UHF becomes substantially equal and fully competitive, the question of 'UHF impact' must continue to be of substantial concern'. We find that the petitioners have raised a substantial question of fact with respect to UHF impact, and an appropriate issue will be specified.**

In summary, the impairment to UHF in Florence warrants a denial of the subject applications. When added to the adverse effects on two operating commercial UHF stations and, possibly, an operating educational UHF station in Columbia, the impairment grows substantially. And if we were to add even slight adverse effects to UHF in Wilmington, North Carolina, and Savannah and Augusta, Georgia, the impairment reaches the point of substantial plus.

DISSENTING STATEMENT OF BOARD MEMBER
DEE W. PINCOCK

The majority bases its determination on little more than a surmise, namely, that the existence of an ABC "white area" presupposes a realistic potential for UHF development in Florence. Underlying this assumption are two necessary hypotheses, neither of which is supported by the record evidence. There is no record support for finding either that the Florence market is sufficiently large and economically capable of supporting a UHF facility, or that a UHF facility in Florence could, absent the proposed maximum service tower, obtain an ABC affiliation. The respondents have failed to come forward with factual or economic evidence which would tend to support either of these assertions, let alone present some indication from ABC that such an affiliation would be even a remote possibility. Rather, the majority has chosen to sacrifice definite and immediate inauguration of full network service to well over one hundred and forty thousand people on the hypothetical assumption that at some time in the indeterminate future a qualified applicant may obtain a construction permit to utilize one of the Florence UHF channels and ABC may find it profitable to affiliate with such a station. This is a poor substitute for the immediate service offered by the instant proposal and I believe contra to Commission policy as enunciated in *VHF Channel Assignment at Mount Vernon, Illinois*, FCC 69–1209, 17 RR 2d 1620, reconsideration denied 22 FCC 2d 222, 18 RR 2d 1625, affirmed *Plains Television Corp.* v. *FCC*, 21 RR 2d 2014 (U.S. App. D.C. (1971)), where the Commission indicated that, even though a proposed VHF assignment would provide a first Grade B signal to a substantial white area, which theoretically could be served by a UHF facility, the proposed VHF assignment was consistent with fostering UHF development ". . . simply because there appears to be no likelihood of such development in the near or middle-range future."

F.C.C. 71D-19

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
SOUTH CAROLINA EDUCATIONAL TELEVISION COMMISSION (WITV), CHARLESTON, S.C.	Docket No. 18569 File No. BPET-323
REEVES TELECOM CORP. (WUSN-TV), CHARLESTON, S.C.	Docket No. 18570 File No. BPCT-4107
FIRST CHARLESTON CORP. (WCIV), CHARLESTON, S.C.	Docket No. 18571 File No. BPCT-4121
WCSC, INC. (WCSC-TV), CHARLESTON, S.C.	Docket No. 18572 File No. BPCT-4127
For Construction Permits	

APPEARANCES

R. Russell Eagan and *Theodore A. Shmanda*, Esqs. (Kirkland, Ellis, Hodson, Chaffetz, Masters & Rowe) on behalf of South Carolina Educational Television Commission (WITV) and WCSC, Inc. (WCSC-TV); *Joseph F. Hennessey*, Esq. (Pittman, Lovett, Ford, Hennessey & White) on behalf of Reeves Telecom Corporation (WUSN-TV); *Howard F. Roycroft*, Esq. (Hogan and Hartson) on behalf of First Charleston Corporation (WCIV), parties applicant; *Ben C. Fisher*, Esq. (Fisher, Wayland, Duval, Southmayd & Cooper) and *James V. Dunbar, Jr.*, Esq. on behalf of Cosmos Broadcasting Corporation (WIS-TV), *Michael S. Horne*, Esq. (Covington & Burling) on behalf of Palmetto Radio Corporation (WNOK-TV); *David R. Anderson*, Esq. (Wilmer, Cutler & Pickering) on behalf of Columbia Television Broadcasters, Inc. (WOLO-TV), parties respondent and/or interviewers; and *John F. Reilly*, Esq., on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER JAMES F. TIERNEY

(Issued April 15, 1971; Released April 23, 1971)

PRELIMINARY STATEMENT

1. By Memorandum Opinion and Order (18 FCC 2d 328, released June 18, 1969) the Commission being unable to make the statutory finding that a grant of the instant applications would serve the public interest because of certain substantial and material questions of fact not being susceptible of resolution without an evidential hearing, ordered such a hearing on the following issues:

1. To determine whether a grant of the applications would impair the ability of authorized and prospective UHF television broadcast stations in the area

to compete effectively, or would jeopardize, in whole or in part, the continuation of existing UHF television service.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, whether grant of the applications would serve the public interest, convenience and necessity.

2. In its designation Order the Commission particularly noted its concern respecting the issues here, stating:

> While the Commission encourages television broadcast stations to operate with maximum facilities in order to make the most efficient use of channel assignments, we have also expressed our concern with fostering the development of UHF broadcasting. By the hearing ordered herein, a full record will be established which will form a basis for determining the choice between these policies.

3. Rovan of Florence, Inc.,[1] then permittee of WPDT, Channel 15, Florence, South Carolina; Clay Broadcasting Corporation (WWAY), licensee of Station WWAY, Channel 3, Wilmington, North Carolina;[2] Palmetto Radio Corporation (WNOK–TV), licensee of WNOK–TV, Channel 19, Columbia, South Carolina, and Columbia Television Broadcasters (WOLO–TV), licensee of WOLO–TV, Channel 25, Columbia, South Carolina,[3] were named parties respondent by the Commission.

4. The burden of proceeding under Issue 1, *supra*, was placed on the parties respondent and the burden of proof under Issues 1 and 2 on the applicants.[4]

5. Leave to Intervene was granted by the Presiding Officer to Cosmos Broadcasting Corporation (WIS–TV), licensee of WIS–TV, Channel 10, Columbia, South Carolina, by Order released August 11, 1969, (FCC 69M–993).

6. In a ruling at the prehearing conference, September 26, 1969, the Presiding Officer determined that the issues as designated were sufficiently broad to comprehend a proper showing disclosing the public interest benefits to be realized from a grant of the applications (Tr. 11–12).

7. By Memorandum Opinion and Order released October 30, 1969, (20 FCC 2d 342), the Review Board added the following issue to the case:

> To determine the efforts made by Reeves Telecom Corporation (WUSN–TV), First Charleston Corporation (WCIV) and WCSC, Inc. (WCSC–TV) to ascertain the community needs and interests of the area to be served and the means by which the applicants propose to meet such needs and interests.

8. The Commission, upon formal request of the parties applicant, waived (FCC 70–315 released March 30, 1970) its Interim Procedure staying further proceedings on *Suburban* issues (See *Interim Procedure Relating to Submission of Community Survey Showings in*

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[1] Rovan's construction permit was cancelled by the Commission July 15, 1969 (19 FCC 2d 966). It later withdrew as a party to the proceeding by letter dated August 20, 1969.

[2] The Commission granted Clay's request to be removed as a party September 3, 1969 (20 FCC 2d 666).

[3] First expressing a wish not to participate in an expensive complex hearing, WOLO–TV, thus, did not file an appearance. Later it petitioned, November 9, 1969, for reinstatement which was granted December 1, 1969, by the Presiding Officer (FCC 69M–959).

[4] The Review Board declined to shift the burden of proof under Issue 1 to the respondents, 20 FCC 2d 550; Application for Review denied, FCC 70–158, released February 27, 1970.

Connection with Radio and Television Applications—FCC Public Notice 70-312 released March 26, 1970). This allowed the concerned applicants to make their respective showings without delay. In this regard the parties applicant have waived any right to later amend their *Suburban* showings should the Commission subsequently promulgate policies and criteria different from those presently in being (Tr. 391).

9. A prehearing conference was held on September 26, 1969, with hearing sessions on February 19, 24–25, March 31, April 1–3, 9–10, May 27–28, 1970. The record was closed on May 28, 1970, and briefly re-opened on July 18 and August 27, 1970, to receive minor changes in one application; and was again closed on August 27, 1970. Comprehensive Proposed Findings and Conclusions were filed by all parties within the allotted time and Reply Findings were filed by Parties Respondent/Intervenor, September 21, 1970. The record was again re-opened briefly to receive a further amendment to an application; it was finally closed on December 22, 1970.

THRESHOLD FINDINGS OF FACT

Engineering and Other Technical Considerations

1. The four applicants, one of which is an educational television licensee (an arm or affiliate of the State Educational System), operate four authorized Charleston, South Carolina, television stations [5] and propose by their applications to move from their present and respective transmitter sites located approximately 20 miles northeast of the center of the city where a 2000 foot tower will be utilized jointly to support the several television transmitting antennas. The licensees and the present and proposed facilities are as follows (Applicants' Ex. 2, p. 1, Table 1, p. 1; Ex. 20, Fig. 3A):

Licensee	Call	Ch.	Present	Proposed
Reeves Broadcasting Corp.	WUSN-TV (ABC)	2	100 kw./790 ft.	100 kw./1960 ft.
First Charleston Corp.	WCIV (NBC)	4	100 kw./939 ft.	100 kw./1950 ft.
WCSC, Inc.	WCSC-TV (CBS)	5	100 kw./1000 ft.	100 kw./1950 ft.
South Carolina Educational Television Commission.	WITV (ETV)	7	28.8 kw./220 ft.	316 kw./1720 ft.

2. Charleston lies about midway on South Carolina's eastern boundary which extends in a northeast-southwest direction and is defined by the Atlantic Ocean. Charleston is a city of 65,925 persons and in addition to being the seat of Charleston County (pop. 216,382) it is also the central city of the Charleston Urbanized Area (pop. 160,113) and the Charleston Standard Metropolitan Statistical Area (SMSA) (pop. 216,382), the latter in 1960 consisting of Charleston County only.[6] Subsequent to the 1960 U.S. Census, the Charleston Standard

[5] These are the only four television channels allocated to Charleston. Aural facilities in Charleston include five AM stations (one daytime only) and two FM stations.

[6] Unless otherwise noted, all population data reflect the 1960 U.S. Census (Appl. Ex. 2, pp. 1d, 16; Ex. 20, Table 3, p. 4).

Metropolitan Statistical Area was redefined to also include adjacent Berkeley County (pop. 38,196). Thus, the redefined Charleston SMSA contains a total of 254,578 persons.

Coverage—Charleston Commercial TV

3. Although there is some displacement in the location of the respective predicted Grade B contours of the three Charleston commercial VHF stations WUSN-TV, WCIV, WCSC-TV, operating as presently authorized, nevertheless, the coverage areas are not materially different. The Grade B contours over the land areas reach an average distance of approximately 70 miles northeast of the center of Charleston and some 63 to 65 miles in other directions. Operation as proposed by these three commercial VHF stations would result in substantial increments in Grade B coverage especially to the north and northwest without loss of existing Grade B coverage elsewhere. The Grade B contours of proposed WCIV and proposed WCSC-TV are congruent reaching about 105 miles to the northeast of Charleston, some 85 miles to the northwest and 66 miles to the southwest while WUSN-TV's proposed Grade B contour extends about 1.5 miles less in the several directions (Appl. Ex. 2, Figs. 1 and 2; Ex. 21, pp. 2, 3, 4, Figs. 1, 2, 3). Tabulated below are the populations and areas encompassed by the present and proposed Grade B contours of WUSN-TV, WCIV, and WCSC-TV. The land areas enclosed by these contours are essentially semi-circular in shape and lie entirely within South Carolina[7] (Appl. Ex. 2, Fig. 1, Ex. 21, p. 6, Figs. 1, 2, 3):

GRADE B COVERAGE

	Population			Area (sq. mi.)		
	WUSN-TV	WCIV	WCSC-TV	WUSN-TV	WCIV	WCSC-TV
Present	436,898	461,628	470,550	6,467	6,820	7,233
Proposed	781,033	803,902	803,902	10,600	11,233	11,233
Gain	344,135	342,274	333,352	4,133	4,413	4,000

4. As presently authorized WUSN-TV, WCIV, and WCSC-TV provide Grade B coverage to all of Charleston (pop. 216,382), Berkeley (pop. 38,196), and Dorchester (pop. 24,383) counties and partial coverage to numerous other surrounding counties. Under the proposed mode of operation each of the three stations would provide complete Grade B coverage of the following additional counties which are now partially included within the present Grade B contour: Georgetown (pop. 34,798), Williamsburg (pop. 40,932), Clarendon (pop. 29,490), and Colleton (pop. 27,816). Additionally, partial Grade B coverage would be provided to a large number of the surrounding counties (Appl. Ex. 2, Figs. 1 and 2). Tables A and B listed in Appendix III, pp. 12–15, respectively, show population and area coverage statistics

[7] The other half of what would be an essentially circular area for each station falls in the Atlantic Ocean (Appl. Ex. 2, Figs. 1, 2).

for the counties that are entirely or partially within the present and proposed Grade B contours of the three Charleston commercial VHF television stations (Appl. Ex. 2, Fig. 1, Tables 5 and 6).

5. No other television station provides Charleston with at least Grade B coverage save the four local television stations. The availability of other Grade B coverage to the areas within the present and proposed Grade B contours of Charleston's three commercial VHF stations is essentially the same and is set forth in the following table (Appl. Ex. 20, Fig. 2A; Ex. 27, pp. 9–10):

Station	Ch.	Location	Area Percentage	
			Present	Proposed
WJCL	22	Savannah, Ga.	30	20
WVAN-TV	*9	do.	10	8
WSAV-TV	3	do.	12	10
WTOC-TV	11	do.	11	9
WJBF	6	Augusta, Ga.	15	15
WRDW-TV	12	do.	13	13
WATU-TV	26	do.	10	10
WIS-TV	10	Columbia, S.C.	30	40
WOLO-TV	25	do.	10	18
WNOK-TV	19	do.	10	18
WBTW	13	Florence, S.C.	15	30
WECT	6	Wilmington, N.C.	5	15
WWAY-TV	3	do.	2	8
WUNJ-TV	*39	do.	0	5

While two or three Grade B services are now present in substantial portions of the gain area from stations in other cities other portions of the gain area receive five or more such services (Appl. Ex. 2, Figs. 1, 2).

Charleston Area Network Service

6. Each of the three commercial television stations in Charleston is network affiliated. The extent to which the present Grade B coverage areas of these stations is overlapped by the Grade B coverage areas of other television stations with the same network affiliations is depicted in the tables below (Appl. Ex. 2, Tables 11, 12, 13; Ex. 22, pp. 7, 8):

ABC NETWORK OVERLAP (PRESENT)

	Population	Percent	Area	Percent
WUSN-TV (Grade B)	436,898		6,467	
WTOC-TV*	47,520	10.8	759	11.7
WJBF overlap	24,833	5.6	959	14.8
WOLO-TV overlap	6,483	1.4	165	2.6
WBTW** overlap	30,542	6.9	897	13.8

*Carries ABC and CBS programs (Appl. Ex. 20, Fig. 7A; Ex. 2, Table 11). From 1954 to 1960, overlap with original WTOC-TV included 47,198 persons (10.8%) in an area of 678 square miles (10.4%).

**Carries CBS programs only according to a recent survey. Has contract to also carry ABC network (Tr. 449-451, 459, 1152-1161). Present facility is the same as original in 1954 (Appl. Ex. 2, Table II, p. 2).

CBS NETWORK OVERLAP (PRESENT)

	Population	Percent	Area	Percent
WCSC-TV (Grade B)	470,550		7,233	
WTOC-TV* overlap	48,629	10.3	877	12.1
WRDW-TV overlap	23,075	4.9	878	12.1
WNOK-TV overlap	25,306	5.3	392	5.4
WBTW** overlap	49,731	10.5	1,252	17.3

*Carries ABC and CBS programs (Appl. Ex. 20, Fig. 7A; Ex. 2, Table 12). From 1959 to 1960, overlap with original WTOC-TV included 47,654 persons (10.1% in area of 790 square miles (10.9%)).

**Carries CBS programs only according to recent survey. Has contract to also carry ABC network (Tr. 449-451, 459, 1152-1161). Present facility is the same as original in 1954 except for change from Channel 8 to 13 (Appl. Ex. 2, Table 11, p. 2).

NBC NETWORK OVERLAP (PRESENT)

	Population	Percent	Area	Percent
WCIV (Grade B)	461,628		6,820	
WIS-TV overlap	95,828	20.7	2,087	30.6
WSAV-TV overlap	51,201	11.0	1,141	16.7
WECT overlap	4,483	.9	235	3.4

Proposed Expansion of Network Service

7. Operating as proposed, each of Charleston's three commercial television stations would extend their network service to new areas presently without such network service. The enlargement of these network services within the respective Grade B contours is shown in the table below.

Station	Service	Population	Area*
WUSN-TV	First ABC	130,780	1,730
WICV	First NBC	3,046	140
WCSC-TV	First CBS	22,182	234
	First 3-Network	159,383	1,829

*Square miles.

A first ABC service would be provided in most of Florence County and in portions of counties adjacent thereto. A first NBC service would be furnished to small portions of four counties where they abut (Bamberg, Allendale, Hampton and Colleton). A first CBS service would be furnished in a portion of Horry County. The first three-network service would become available in Horry, Marion, and Florence Counties and in portions of counties adjacent thereto including small portions of Bamberg, Allendale, Hampton, and Colleton Counties—the former county areas being located at least 63 miles north of Charleston and the latter at least 62 miles to the west of the city.

Coverage—Charleston Educational TV

8. WITV, the non-commercial educational VHF television station in Charleston, commenced its present mode of operation on January 19, 1964. Operating with these facilities, WITV's predicted Grade B

contour reaches some 28 to 30 miles from the center of Charleston and to within 68 miles of Florence, South Carolina to the north and 72 miles short of Columbia, South Carolina to the northwest. A construction permit (CP) authorization granted February 18, 1970[8] would extend the reach of WITV's Grade B contour progressively from about 52 miles in the southwest to a distance of 58 miles north of Charleston. Under the CP mode of operation the Grade B contour would fall within 38 miles of Florence and 47 miles of Columbia. A modification of the construction permit (Mod. CP) granted April 23, 1970 results in small changes in station coverage, namely, an extension of the Grade B coverage area by one or two miles to the north and northeast and to the southwest with a one mile decrease to the northwest. With this modified operation, WITV's Grade B contour reaches 60 miles in a north direction, 53 miles to the northwest, and 54 miles to the southwest. The contour will now fall short of Florence and Columbia by distances of 36 miles and 48.5 miles, respectively. Should WITV be permitted to operate as proposed a substantial increase in the station's Grade B coverage area would result. The proposed Grade B contour would extend 95 miles to the north, 78 miles to the northwest and 55 miles to the southwest and fall within 5 miles of Florence and 24 miles of Columbia (Appl. Ex. 22, Fig. 3B).

9. Coverage data for the several modes of WITV operation described above are set out in the following table (Appl. Ex. 22, p. 2; Tr. 446, 1154):

	Population	Area (Sq. mi.)
Present (Jan. 19, 1964)	246,757	1,629
CP (Feb. 18, 1970)	382,088	5,757
Gain	135,331	4,128
CP (Feb. 18, 1970)	382,088	5,757
Mod. CP (Apr. 23, 1970)	398,728	6,007
Gain	16,640	250
Mod. CP (Apr. 23, 1970)	398,728	6,007
Proposed	651,848	9,374
Gain	253,120	3,367
Total gain between present and proposed	405,091	7,745
First noncommercial educational service gained between present and Mod. CP	86,860	2,520
First noncommercial educational service gained between Mod. CP and proposed	22,085	458
Total first noncommercial educational service gained between present and proposed	108,945	2,978

Technical Aspects of Proposed Changes Respecting UHF

10. *Five basic areas involved.* The proposed changes in the facilities of WUSN-TV, WCIV, and WCSC-TV (the three Charleston commercial VHF television stations) and the resultant extension of their respective Grade B coverage areas would concomitantly increase over-

[8] This construction permit authorizes operation by WITV at the present site of WCSC-TV which is located six miles east of the center of Charleston. WITV presently operates in Charleston at a site about one mile east of the center of the city (Appl. Ex. 2, Table 1, Fig. 3; Appl. Ex. 22, p. 2; Tr. 445, 1154).

lap with the Grade B coverage areas of existing/prospective commercial UHF stations in Florence and Columbia, South Carolina and to a lesser degree with such stations in Wilmington, North Carolina, and Augusta and Savannah, Georgia. These several communities are variously located with respect to Charleston at distances ranging from approximately 85 miles (Savannah) to 150 miles (Wilmington).

The Florence Area

11. Florence, South Carolina is a city of 24,722 persons and the seat of Florence County (pop. 84,438). The city is not part of any urbanized area nor is the county included as part of a standard metropolitan statistical area. Geographically, Florence is situated in the northeast sector of the State and about 95 miles north of Charleston and 72 miles northeast of Columbia. Television broadcast facilities in Florence,[9] present and prospective, include the following:

Ch.	Call	Facility	Affiliation
13	WBTW	316 kw./790 ft.	CBS.
15[10]		Idle	
21		do.	
33*	WJPM-TV	537 kw./790 ft.	Education.

[10] Channel 15 was formerly authorized for use by WPDT with 141 kw./910 ft. under a construction permit granted in 1968; however, this construction permit was subsequently cancelled on July 15, 1969.

12. Since Florence has no authorized commercial Channel 15 or Channel 21, it was assumed for the purposes of this proceeding that a prospective UHF station would operate with an effective radiated power of 141 kw and antenna height above average terrain of 910 feet, similar to the Channel 15 facility authorized WPDT before that station's construction permit was cancelled in 1969. The predicted Grade B contour of such a station operating on Channel 15 or 21 will extend to a radius of 43 miles in all directions and will encompass land areas not only in South Carolina but also in North Carolina (about 10%). All of the areas will be entirely encompassed by the Grade B contour of WBTW,[11] the commercial VHF station in Florence (Appl. Ex. 2, Fig. 1).

13. The present Grade B contours of WCSC–TV, WCIV, and WUSN–TV fall 26.5, 28 and 31 miles, respectively, short and to the south of Florence and overlap from 2 to 5% of the area enveloped by the Grade B contour of a prospective UHF station. The proposed Grade B contours of WCSC–TV, WCIV, and WUSN–TV would extend 4, 4, and 2.5 miles, respectively, beyond and to the north of Florence thereby providing the city with Grade B coverage for the first time in each instance. Under the proposed modes of operation, the Grade B contour of the Charleston stations would overlap about 40% of the area within the Grade B contour of a prospective station

[9] Florence has three AM stations and one FM station.
[11] The WBTW Grade B contour has a radius of approximately 58 miles (Appl. Ex. 2, Fig. 2).

in Florence (Appl. Ex. 2, Figs. 1, 2; Appl. Ex. 20, Fig. 2A; Appl. Ex. 27, pp. 2, 3).

14. In addition to service provided by WBTW, the local VHF station, Florence obtains Grade B coverage from WIS–TV in Columbia, South Carolina, and WECT in Wilmington, North Carolina, both of which are VHF stations [12] (Appl. Ex. 2, Fig. 2). As noted, *supra*, WCSC–TV, WCIV, and WUSN–TV will also provide Florence with Grade B coverage in the event their respective applications are granted.

15. In the area enclosed by the Grade B contour of a prospective Florence UHF facility other Grade B coverage would be provided by existing commercial television stations to the extent indicated in the following table. Network affiliations are also shown for those stations that have such ties (Appl. Ex. 2, Figs. 1, 2; Appl. Ex. 20, Fig. 7A; Appl. Ex. 27, pp. 3, 4).

Call	Location	Network	Coverage of prospective (percent), UHF [13]
VHF:			
WBTW	Florence, S.C	CBS [14]	100
WIS–TV	Columbia, S.C	NBC	60
WECT	Wilmington, N.C	NBC	60
WWAY–TV	do	ABC	15
WSOC–TV	Charlotte, N.C		15
WBTV	do		5
WGHP	Greensboro, N.C		2
WUSN–TV	Charleston, S.C	ABC	2(40)
WCIV	do	NBC	4(40)
WCSC–TV	do	CBS	5(40)
UHF:			
WCTU–TV	Charlotte, N.C		16
WCCB–TV	do		15
WNOK–TV	Columbia, S.C	CBS	12
WOLO–TV	do	ABC	12

[13] Percentages less than 100% are approximate. Percentages in ( ) represent proposed coverage.
[14] Although WBTW carries only CBS programs the station has a contract to also carry ABC programs (Tr. 449–451, 459, 1152–1161).

16. From two to eight Grade B services (commercial) are available to any one portion of the Grade B coverage area of a prospective Florence UHF station. "Two-service" areas exist in a substantial portion of the prospective station's coverage area. Such areas are served by WBTW and by either WIS–TV or WECT, all of which are VHF facilities (Appl. Ex. 2, Figs. 1, 2). The "eight-service" area lies in a small portion of Chesterfield County in the northwest sector of the prospective service area [15] (Appl. Ex. 2, Figs. 1, 2). Since Florence lies within the Grade B contours of WBTW (CBS), WIS–TV (NBC) and WECT (NBC), the city has available both CBS and NBC programs. Proposed WCSC–TV and proposed WCIV–TV will

[12] The Grade B contour of Station WIS–TV extends 18 miles beyond and to the east of Florence and that of Station WECT extends 7.5 miles beyond and to the west of the city (Appl. Ex. 2, Fig. 2).
[15] This area receives Grade B coverage from VHF stations WBTW, WIS–TV, WBTV, and WSOC–TV and from UHF stations WOLO–TV, WNOK–TV, WCCB–TV, and WCTU–TV. The Grade B contours of WUSN–TV, WCIV, and WCSC–TV, present and proposed, do not reach into this maximum service area (Appl. Ex. 2, Figs. 1, 2).

also, respectively, provide Florence with CBS and NBC programs. However, proposed WUSN-TV's coverage of Florence will provide that city with a first full ABC network service.

17. *Florence Area of Dominant Influence (ADI).*[16] This is a six-county area in South Carolina consisting of the following counties listed below together with identification of the county seats and population statistics (Columbia Joint Ex. 1, Figs. 1, 2, 3).

County	Population	County seat	Population
Florence	84,438	Florence	24,722
Darlington	52,928	Darlington	6,710
Marion	32,014	Marion	7,174
Chesterfield	33,717	Chesterfield	1,532
Marlboro	28,529	Bennettsville	6,963
Dillon	30,584	Dillon	6,173

Of the six counties in the Florence ADI only Florence, Darlington and Marion Counties are involved inasmuch as the Grade B contours of WUSN-TV, WCIV, and WCSC-TV operating as proposed would penetrate these three counties for the first time.[17] Florence County is bordered on the northwest by Darlington County and on the east by Marion County. This three-county area lies no less than 72 miles north of Charleston (Appl. Ex. 2, Fig. 2).

18. The following tabulation reflects the proportionate coverage of the three "penetrated" counties in the Florence ADI by commercial television stations, together with an indication of the grade of signal these stations provide in the respective county seats (Appl. Ex. 2, Figs. 1, 2, Table 6; Ex. 20. Fig. 2A; Ex. 27, p. 3):

Station	Ch.	Percent Grade B County Coverage (Area/pop.) Florence	Darlington[18]	Marion	Composite**	Coverage of County Seat*** Florence	Darlington	Marion
WUSN-TV (prop.)*	2	95/94.8	7/10.1	70/54.5	60/—	B	----------	B
WCSC-TV (prop.)*	5	97/96.4	10/12.5	75/72.4	65/—	B	----------	B
WCIV (prop.)*	4	97/96.4	10/12.5	75/72.4	65/—	B	----------	B
Florence UHF	----------	100/100	100/100	100/100	100/100	PCG	PCG	PCG
WBTW	13	100/100	100/100	100/100	100/100	PCG	PCG	PCG
WIS-TV	10	90/—	100/100	20/—	70/—	B	A	----------
WECT	3	70/—	40/—	100/100	70/—	B	B	B
WWAY-TV	6	0/0	0/0	40/—	10/—	----------		

*Present Grade B contours do not reach three-county area.
**All three counties combined.
***PCG = Principal City Grade; A = Grade A; B = Grade B.

[16] A term of Art devised and employed by audience measurement enterprises and apparently accepted in the Broadcast industry as a useful tool of measuring audience viewing on a county by county basis throughout the United States.

[17] These contours barely penetrate the southern tip of Dillon County which generally borders Florence County on the northeast (Appl. Ex. 2, Fig. 2).

[18] There is a slight penetration of Darlington County only by the Grade B contours of WSOC-TV, WCTU-TV, and WCCB-TV in Charlotte, North Carolina and by WNOK-TV and WOLO-TV in Columbia, North Carolina (Appl. Ex. 22, Map D).

The Columbia Area

19. Columbia, South Carolina, is a city of 97,433 persons, the seat of Richland County (pop. 200,102), and the capital of the state. Columbia is also the central city of the Columbia Urbanized Area (pop. 162,601) and of the Columbia Standard Metropolitan Statistical Area (pop. 260,828) which is comprised of Richland and Lexington Counties. The city is situated near the center of the state about 102 miles northwest of Charleston and 72 miles southwest of Florence (Appl. Ex. 2, Fig. 1). Television broadcast facilities in Columbia,[19] present and prospective, are shown in the following table:

Ch.	Call	Facility [20]	Affiliation
10	WIS-TV	316 kw./1550 ft.	NBC.
19	WNOK-TV	1,046 kw./640 ft.	CBS.
25	WOLO-TV	871 kw./620 ft.	ABC.
35*	WRLK-TV	513 kw./1030 ft.	Educational.
57	----	Idle	----

*Footnote omitted in printing.

[20] Horizontal effective radiated power shown. Maximum lobe powers for the UHF stations are as follows WNOK-TV—1,250 kw; WOLO-TV—1,205 kw; WRLK-TV—617 kw.

20. The areas encompassed by the predicted Grade B contours of WNOK-TV and WOLO-TV operating in accordance with their present authorizations are nearly identical and lie entirely within South Carolina. With respect to the center of Columbia, the radial reach of the area varies between approximately 49 and 54 miles. Again, for the purpose of this proceeding, a prospective station on vacant Channel 57 is assumed to provide Grade B coverage similar to that of the other two commercial UHF stations in Columbia. The Grade B contour of WIS-TV, the commercial VHF station in Columbia, includes all of the area within the Grade B contours of the UHF stations and extends from 4 to 38 miles beyond (Appl. Ex. 20, Fig. 2A).

21. The present and proposed Grade B contours of the three Charleston commercial VHF stations (WCSC-TV, WCIV, and WUSN-TV) penetrate the Grade B coverage area of WNOK-TV/WOLO-TV. The present Grade B contours of WCSC-TV, WCIV and WUSN-TV fall 36, 37 and 38 miles, respectively, short and to the southeast of Columbia and overlap 5 to 6% of the WNOK-TV/WOLO-TV Grade B coverage area. In the case of the proposals, the Grade B contours of WCSC-TV/WCIV would reach to within 14.5 miles of Columbia and that of WUSN-TV would fall short of the city by 16 miles. The proposed overlap would involve from 22 to 25% of the WNOK-TV/WOLO-TV Grade B coverage area (Appl. Ex. 2, Figs. 1, 2; Appl. Ex. 20, Fig. 2A; Appl. Ex. 27, p. 1).

22. The five-county area in which WNOK-TV/WOLO-TV expect to suffer maximum impact from the contemplated expansion of the commercial VHF facilities in Charleston consists of the following

[19] Columbia also has five AM stations and three FM stations.

counties which are listed together with their county seats.[21] (Appl. Ex. 2, pp. 11, 12, Table 4, Fig. 2; Col. Joint Ex. 1, Fig. 1:)

County	Population	County Seat	Population
Calhoun*	12,256	St. Matthews	2,433
Clarendon**	29,490	Manning	3,917
Lee*	21,832	Bishopville	3,586
Orangeburg*	68,559	Orangeburg	13,852
Sumter*	74,941	Sumter	23,062

*Within Columbia ADI.
**Within Charleston ADI.

Lee and Sumter Counties adjoin the eastern boundary of Richland County where Columbia is located. Calhoun County adjoins the southeastern boundary of Richland County. Clarendon County adjoins Sumter County on the south and Calhoun County on the east. Orangeburg County adjoins Calhoun County on the south. The five-county area extends in an arc clockwise from east of Columbia to south of the city and lies largely in the direction of Charleston but closer to Columbia (Appl. Ex. 2, Figs. 1, 2).

23. Under present authorizations, the Grade B contours of WNOK-TV/WOLO-TV include all of Calhoun County, most of Lee, Sumter, and Orangeburg Counties, and about one-third of Clarendon County (Appl. Ex. 2, Figs. 1, 2). Taking into account the small displacement in contours, the following table shows the number of persons encompassed in each county by the respective Grade B contours (Appl. Ex. 20, Table 2):

County	WNOK-TV		WOLO-TV	
	Population	Percent	Population	Percent
Clarendon	15,878	54	12,529	43
Calhoun	12,256	100	12,256	100
Sumter	72,414	97	71,940	96
Lee	19,905	91	19,904	91
Orangeburg	54,891	80	53,841	78
Five-county [22]	175,344	85	170,470	83

[22] The five-county area is entirely within the Grade B contour of WIS-TV.

The extent to which the present and proposed operations of the three Charleston commercial VHF television stations provide Grade B coverage to the populations in these counties is shown in the following table (Appl. Ex. 2, Tables 5, 6).

[21] Ancillary to this finding is the testimony of the Columbia stations' engineering witness who stated that where both UHF and VHF signals are present, UHF suffers some handicap due to poor receiving antennas, transmission line loss between antenna and receiver, disparity of UHF tuners, and antenna orientation (Col. Joint Ex. 1, p. 10). He further contends that in the absence of a satisfactory VHF signal the tendency is to install a more efficient UHF antenna (Tr. 100). Moreover, it is his view that considering the quality of the WNOK-TV/WOLO-TV signals in the several counties, the advantage the two UHF stations now enjoy would be materially decreased if the Charleston VHF stations were allowed to operate with the proposed facilities.

GRADE B POPULATION COVERAGE

County	WUSN-TV				WCIV		WCSC-TV		WCIV/WCSC-TV	
	Pres.	Percent	Prop.	Percent	Pres.	Percent	Pres.	Percent	Prop.	Percent
Clarendon	12,263	42	29,490	100	20,121	68	21,912	74	29,490	100
Calhoun	26	------	9,858	81	523	4	1,046	9	10,385	85
Sumter	0	0	66,767	89	0	0	0	0	70,261	94
Lee	0	0	7,150	33	0	0	0	0	9,446	43
Orangeburg	22,016	32	57,971	85	24,260	35	25,404	37	58,988	86
Five-County	34,305	17	171,236	83	44,904	22	48,362	23	178,570	86

24. In the above-five county area each of the county seats is also the largest community in the county and has an approximately central location in the county (Col. Joint Ex. 1, p. 4). The table in Appendix III, pages 8 and 9, lists signal grade and/or field strength in each of the county seats from the Charleston VHF stations (present and proposed) and from those other stations that provide at least Grade B coverage therein and also the extent of estimated Grade B coverage to the county areas (Appl. Ex. 2, Fig. 1, Table 4; Appl. Ex. 20, Fig. 2A; Col. Joint Ex. 1, pp. 18; Col. Joint Ex. 3).

25. There is the following additional detail with respect to each of the county seats in the five-county area (Appl. Ex. 2, Figs. 1, 2; Col. Joint Ex. 1): (a) Bishopville, the county seat of Lee County, is located 45 miles east northeast of Columbia, 27 miles west of Florence and 97 miles north northwest of Charleston.[23] The Grade B contours of the two Columbia UHF stations, WNOK–TV and WOLO–TV, extend 6 miles beyond Bishopville, Columbia VHF station WIS–TV and Florence VHF Station WBTW provide principal city grade signals over the community. The Grade B contours of Charleston VHF WCSC–TV, WCIV, and WUSN–TV presently fall 31 to 35 miles short of Bishopville; the proposed Grade B contours would fall 3 to 4.5 miles short of the community. (b) Sumter, the county seat of Sumter County, is located 37 miles east of Columbia, 38 miles southwest of Florence and 80 miles north northwest of Charleston.[24] The Grade B contours of the two Columbia UHF stations, WNOK–TV and WOLO–TV, extend 13 miles beyond Sumter. Columbia VHF station WIS–TV places a principal city grade signal over the community. The Grade B contour of Florence VHF Station WBTW falls 14 miles beyond Sumter. The Grade B contours of the three Charleston VHF stations fall 13 to 17 miles short of Sumter; the proposed Grade B contours would fall 11 to 12.5 miles beyond the community. According to Applicants' engineer, many television receiving antennas in Sumter are directed toward WBTW in Florence (Appl. Ex. 2, p. 24). (c) St. Matthews, the county seat of Calhoun County, is located 25 miles

[23] Bishopville is 44.5 miles east northeast of WNOK–TV, 43 miles east northeast of WOLO–TV, 30 miles east of WIS–TV and 89 miles north northwest of the proposed joint site (Col. Joint Ex. 1; Appl. Ex. 2, Figs. 2, 3).

[24] Sumter is 38 miles east of WNOK–TV, 36.5 miles east of WOLO–TV, 27.5 miles east southeast of WIS–TV, 42 miles west of WBTW and 73 miles north northwest of the proposed joint site (Col. Joint Ex. 1; Appl. Ex. 2, p. 24, Figs. 2, 3).

southeast of Columbia, 69 miles east of Augusta and 75 miles northwest of Charleston.[25] Calhoun County extends to within 6 miles of Columbia. The two Columbia UHF stations, WNOK–TV and WOLO–TV, place a Grade A signal over St. Matthews and Columbia VHF Station WIS–TV places a principal grade signal over the community. The Grade B contours of the two Augusta VHF Stations, WRDW–TV and WJBF, extend 7.5 and 9.5 miles beyond St. Matthews while the like contour of Augusta's UHF station, WATU–TV falls just beyond the city. The Grade B contours of the three Charleston VHF stations presently fall 11 to 14 miles short of St. Matthews; however, the proposed Grade B contours would fall 7.5 to 9 miles beyond the community. The two Columbia UHF stations would retain the dominant signals in St. Matthews. According to Applicants' engineer, roads from St. Matthews lead to Columbia and television receiving antennas presently indicate a bias toward Columbia (Appl. Ex. 2, p. 26; Tr. 558). (d) Orangeburg, the county seat of Orangeburg County, is located 34.5 miles south of Columbia, 62 miles east of Augusta, and 70 miles northwest of Charleston.[26] The Grade B contours of the two Columbia UHF stations, WNOK–TV and WOLO–TV, extend 14 miles beyond Orangeburg, and Columbia VHF Station WIS–TV places a principal city grade signal over the community. The Grade B contours of Augusta VHF Stations WRDW–TV and WJBF extend 15 to 18 miles beyond Orangeburg and that of the UHF station, WATU–TV, extends 8 miles beyond the city. Although the Grade B contours of the three Charleston VHF stations fall 6.5 to 8.5 miles short of Orangeburg, the proposed Grade B contour of the stations would fall 8 to 9.5 miles beyond Orangeburg. According to applicants' engineer, orientation of television receiving antennas presently indicate great reliance on Augusta stations with only a few oriented toward Charleston (Appl. Ex. 2, p. 24; Tr. 556). (e) Manning, the county seat of Clarendon County, is located 48 miles southeast of Columbia, 42 miles southwest of Florence, and 62 miles north northwest of Charleston.[27] Although the Grade B contours of the two Columbia UHF stations, WNOK–TV and WOLO–TV barely include Manning, the VHF Station, WIS–TV, places a principal city grade signal over the community. The Grade B contour of Florence VHF Station WBTW extends 10 miles beyond Manning. In the case of the three Charleston VHF stations, their Grade B contours presently fall in Manning (WUSN–TV) or 2.5 to 3.5 miles beyond the community. Operating as proposed, the Grade B contours of these stations would extend 28 to 29.5 miles beyond the community and the signal in Manning would be increased.

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[25] St. Matthews is 28.5 miles southeast of WNOK–TV and WOLO–TV, 32 miles south of WIS–TV and 77.5 miles northwest of the proposed joint site (Col. Joint Ex. 1; Appl. Ex. 2, Figs. 2, 3).

[26] Orangeburg is 39.5 miles south of WNOK–TV, 39 miles south of WOLO–TV, 45.5 miles south of WIS–TV, 60 to 62 miles east of WRDW–TV and WJBF and 76 miles northwest of the proposed joint site (Col. Joint Ex. 1; Appl. Ex. 2, Figs. 2, 3, p. 24).

[27] Manning is 51 miles east southeast of WNOK–TV, 49.5 miles east southeast of WOLO–TV, 43 miles east southeast of WIS–TV, 65 miles northwest of the present Charleston sites, and 56 miles northwest of the proposed joint site (Col. Joint Ex. 1; Appl. Ex. 2, Figs. 2, 3, p. 21).

26. Columbia's three commercial TV stations since their inception have undergone expansion of operating facilities. WNOK–TV initially commenced operation September 1, 1953 on Channel 67 with 74.1 kw/630 ft. On June 12, 1961, WNOK–TV changed to Channel 19 and operated with 214 kw (245 kw-max.)/640 ft. Subsequently, on July 17, 1968, the station expanded to its present facility, namely, 1,046 kw (1250 kw-max)/640 ft. In the case of WOLO–TV, operation began on September 29, 1961 on Channel 25 with 191 kw (195 kw-max)/440 ft.[28] On August 4, 1964, WOLO–TV changed to 174 kw (178 kw-max)/610 ft. and in November of 1969, the facilities were modified to that now employed by the station—871 kw (1205 kw-max)/620 ft. WIS–TV, the third station, first began broadcasting on assigned VHF Channel 10 with 269 kw/640 ft. on November 7, 1953, about two months after service was inaugurated by WNOK–TV. At that time, the Grade B contour of WIS–TV extended to a radius of about 53 miles and completely encompassed the Grade B contour of WNOK–TV and included the greater part of the five penetrated counties. When the second UHF station, WOLO–TV, commenced operation in 1961, its Grade B coverage area was entirely within the WNOK–TV Grade B contour which was likewise completely encompassed by WIS–TV's Grade B contour (Appl. Ex. 2, Figs. 1, 2).

27. On November 2, 1964, WIS–TV moved to a new transmitter site located 17 miles northeast of Columbia and commenced its present operation with 316 kw/1550 ft. (Col. Joint Ex. 1, Fig. 3). WIS–TV's present Grade B contour sweeps a radius of approximately 73 miles to completely encompass the present Grade B contours of WNOK–TV/WOLO–TV and all of the five penetrated counties. In addition, the contour includes portions of the counties of Colleton, Dorchester, and Berkeley which are adjacent to Charleston County and within the Charleston ADI and falls within 30 miles of Charleston (Appl. Ex. 2, Fig. 2). Within its present Grade B contour WIS–TV includes the following proportionate parts of the listed Areas of Dominant Influence (ADI) (Col. Joint Ex. 3):

ADI	*WIS–TV area coverage* (percent)*
Augusta, Ga	46.8
Charleston, S.C	21.7
Charlotte, N.C	96.3
Columbia, S.C	100
Florence, S.C	72.1
Greenville, S.C.—Spartanburg, S.C	22.4
Asheville, N.C	-----

*The WIS–TV Grade B contour does not include any part of the Savannah, Ga., ADI or the Wilmington, N.C., ADI.

28. The predicted Grade B coverage of the three Columbia television stations operating under the several authorizations since the

[28] Operation on Channel 25 was first inaugurated by WCOS–TV in 1953 and subsequently ceased operation in 1956. The channel was reactivated in 1961 under the call WCCA–TV and in 1964 the call was changed to WOLO–TV.

inception of service is summarized below [29] (Appl. Ex. 2, Tables 1, 2, Figs. 1, 2; Ex. 22, pp. 3, 4, Table 3; Col. Joint Ex. 1, Figs. 1, 2, 3).

	Population	Area (sq. mi.)
WNOK-TV:		
Sept. 1953	342,102	3,529
June 1961*	474,978	4,817
Gain	132,876	1,288
June 1961*	474,978	4,817
July 1968	635,223	8,137
Gain	160,245	3,320
5-county gain	51,055	1,597
Sept. 1953	342,102	3,529
July 1968	635,223	8,137
Gain	293,121	4,608
WOLO-TV:		
Sept. 1961	330,615	3,353
Aug. 1964*	444,176	4,706
Gain	113,561	1,353
Aug. 1964*	444,176	4,706
Nov. 1969	630,596	7,890
Gain	186,420	3,184
5-county gain	50,954	1,541
Sept. 1961	330,615	3,353
Nov. 1969	630,596	7,890
Gain	299,981	4,537
WIS-TV:		
Nov. 1953	681,717	9,073
Nov. 1964	1,190,369	16,428
Gain	508,652	7,355
5-county gain	19,591	503

*Coverage based on horizontal radiated power. Use of maximum lobe power would increase these figures by 2 or 3% (Tr. 1098).

29. Set forth in Appendix III are the population and area statistics of the gain in county coverage by WNOK–TV and WOLO–TV resulting from the latest increase in station facilities (Appl. Ex. 2, Table 7).

30. In addition to local competition from WIS–TV since 1953, when WNOK–TV initially commenced operation, the evidence reflects that penetration of the UHF station's Grade B coverage area by the Grade B contours of VHF stations in adjacent cities progressively increased from that time to the present. In 1953 VHF station WBTV in Charlotte, N.C. penetrated the northern sector of WNOK–TV's Grade B contour to a point 16 miles north of Columbia. In 1954 there was penetration of the area by the Grade B contour of WRDW–TV and WJBF, Augusta, Ga., (both VHF) in the southwestern sector, the Grade B contour of WRDW–TV approaching to within 11.5 miles of Columbia and the like contour of WJBF to within 2.5 miles of the city. Also in 1954 the Grade B contour WBTW in Florence, S.C. (VHF) penetrated the eastern sector of WNOK–TV's Grade B contour to approach within 17 miles of Columbia. By the end of 1954, a substantial portion of the WNOK–TV Grade B contour area was also part of the coverage area of several other stations. In 1957 WSOC–TV in Charlotte, N.C. (VHF) penetrated with its Grade B contour the

[29] Applicants' engineer contends that from his study of terrain profiles extending 32 to 42 miles in various directions from WNOK–TV/WOLO–TV he would expect some restrictions in coverage from that predicted due to shadowing; however, no showing of coverage was made pursuant to such premise (Appl. Ex. 2, pp. 9, 10, Figs. 10–34; Tr. 512–515).

northern sector of WNOK–TV's coverage area to about the same extent as WBTV. In 1958, WJBF (VHF) extended its Grade B contour over the community of Columbia to a point 10 miles beyond the city so that most of the WNOK–TV Grade B coverage area was penetrated and included by the Grade B contours of adjacent city VHF stations. Up until 1958, a number of other VHF stations also provided Grade B coverage in the Columbia UHF station's coverage area, but these areas fell within the above-described contours. In 1961, UHF Station WOLO–TV initially commenced operation in Columbia. At that time WOLO–TV's Grade B contour was completely encompassed by that of WNOK–TV (UHF) and WIS–TV (VHF). In 1964 WOLO–TV increased its facilities to essentially duplicate the WNOK–TV coverage. WNOK–TV and WOLO–TV again changed to similar facilities and coverage in 1968 and 1969, respectively.[30] A number of adjacent city VHF and UHF stations initially commenced operation or changed facilities after 1961 and as a result there was further intrusion with the WNOK–TV/WOLO–TV coverage areas. From the foregoing, it is clear that the greater portion of the Grade B service areas of WNOK–TV and WOLO–TV have been overlapped by adjacent city VHF stations from 1958 and 1961, respectively, to the present time (Appl. Ex. 2, pp. 17–19, Figs. 1, 2, Table 1, pp. 1 to 6; Appl. Ex. 22, Table 3, Maps A, B, C, D).[31]

31. When WNOK–TV inaugurated operation on September 1, 1953, the station operated on now deleted Channel 67 with 74.1 kw/620 ft. At that time the station's Grade B coverage area was overlapped only by the Grade B contour of an adjacent city VHF station, namely WBTV in Charlotte, North Carolina. Of the 342,102 persons in the 3,529 square mile area encompassed by WNOK–TV's Grade B contour, WBTV's Grade B contour included 19,961 persons in 524 square miles or 5% of the population and 15% of the area therein. The remainder of the population (322,141 persons) and area (3,005 square miles) did not fall within the Grade B contour of any other station (Appl. Ex. 2, Table 1; Appl. Ex. 22, pp. 3, 9, Table 3, p. 4 (revised), Map A). As previously noted, about two months after the inception of operation by WNOK–TV, WIS–TV began operation in Columbia on VHF Channel 10 with 269 kw/640 ft. and its Grade B contour completely encompassed the WNOK–TV Grade B contour (Appl. Ex. 2, Fig. 1).

32. In the case of WOLO–TV, initial operation began September 29, 1961, on UHF Channel 25 with 191 kw (195 kw–max.)/440 ft. Portions of its Grade B coverage area were then overlapped by the farthest extending Grade B contours of four VHF stations in adjacent markets in addition to complete Grade B coverage from both WNOK–TV and WIS–TV in Columbia (Appl. Ex. 2, Fig. 1). The extent to which the adjacent city stations penetrated the WOLO–TV Grade B coverage area is shown in the table below (Appl. Ex. 2, Table 1; Appl. Ex. 22, pp. 3, 9, Table 3, p. 3 (revised), Map B).

[30] At this point, both stations extended their Grade B areas into a minor overlap situation (about 5% of their Grade B areas) with the three Charleston commercial stations (Appl. Ex. 2, Figs. 1 and 2).

[31] The history of all pertinent stations is set forth in Appendix III.

GRADE B OVERLAP OF WOLO-TV

	Population	Percent	Area*	Percent
WOLO-TV (Grade B)	330,615		3,353	
WJBF Augusta	224,121	79	1,939	61
WSOC-TV Charlotte	17,209	5	549	17
WBTW Florence	33,728	10	569	17
WFBC-TV Greenville	574	(**)	31	(**)

*Square miles.
**Less than 1 percent.

Not overlapped by the Grade B contour of adjacent city stations was an area containing 17,685 persons or 5% of the population within WOLO-TV Grade B contour.

33. In the area encompassed by the Grade B contours of WNOK-TV/WOLO-TV, other Grade B coverage is provided by existing commercial television stations as shown in the table below. The table also shows the extent to which Grade B coverage would be provided by the three Charleston commercial VHF stations operating as proposed (Appl. Ex. 2, Figs. 1, 2, Table 1; Appl. Ex. 22, Table 3).

Call	Location	Percentage of WNOK-TV/WOLO-TV*	
		Area	Population
VHF:			
WIS-TV	Columbia, S.C.	100	100
WJBF	Augusta, Ga.	56	62
WRDW	do.	54	50
WBTV	Charlotte, N.C.	21	13
WSOC-TV	do.	21	13
WBTW	Florence, S.C.	22	22
WSPA-TV	Spartanburg, S.C.	14	8
WFBC-TV	Greenville, S.C.	10	10
WCSC-TV	Charleston, S.C.	6	4
WCSC-TV (prop.)		25	25
WCIV	Charleston, S.C.	5	4
WCIV (prop.)		25	25
WUSN-TV	Charleston, S.C.	5	4
WUSN-TV (prop.)		22	20
UHF:			
WATU-TV	Augusta, Ga.	45	40
WCTU-TV	Charlotte, N.C.	20	20
WCCB-TV	do.	21	20

*As previously noted, WNOK-TV and WOLO-TV have essentially the same Grade B coverage areas. In some instances area percentage estimated from coverage maps.

34. The city of Columbia, in addition to being served by its local television facilities, also is included within the Grade B contours of VHF stations WJBF and WRDW-TV and UHF station WATU-TV, all in Augusta, Georgia. The Grade B contour of WJBF, WRDW-TV, and WATU-TV extend, respectively, 11 miles, 9 miles, and 3 miles beyond and to the east of Columbia (Appl. Ex. 2, Fig. 2). Elsewhere in the Grade B coverage areas of WNOK-TV/WOLO-TV available coverage from other existing commercial television varies in number from one to seven including the contribution from WIS-TV, the VHF station in Columbia (Appl. Ex. 2, Fig. 2). Under

present operating conditions there is an elongated area [32] containing 18,481 persons who obtain at least Grade B coverage only from WNOK–TV, WOLO–TV and WIS–TV in Columbia. Should the Charleston VHF stations operate as proposed this area would be diminished and the population therein would be reduced to 16,181 persons [33] (Appl. Ex. 22, Table 3, pp. 1, 2, Map D). The several areas where coverage is obtained from the maximum number of stations will not be affected by the proposed expansion of the facilities of the Charleston stations (Appl. Ex. 20, Fig. 2A).

Columbia Area Network Service

35. Each of the three commercial television stations in Columbia is network affiliated and would suffer enlarged network duplication in the event the proposals of WCSC–TV, WUSN–TV, and WCIV, the three Charleston commercial television stations, were implemented. The Grade B contour of WNOK–TV, a CBS affiliate, is overlapped by the Grade B contours of five other CBS affiliated stations including WCSC–TV. In the case of WOLO–TV, an ABC affiliated station, the Grade B contour is overlapped by three other ABC stations, including WUSN–TV. WIS–TV is NBC affiliated and its Grade B contour is overlapped by four other NBC stations, including WCIV. The extent of overlap is set out in the following tabulation [34] (Appl. Ex. 2, Tables 8, 9, 10, Figs. 4, 5, 6; Appl. Ex. 22, pp. 5, 6, 7, Table 3, Map D; Appl. Ex. 27, p. 2):

CBS NETWORK OVERLAP

Overlap from	Population	Percent	Area*	Percent
WNOK–TV (Grade B)	635,223		8,137	
WRDW–TV Augusta	375,245	60	4,139	54
WSPA–TV Spartanburg	55,528	8	1,187	14
WBTV Charlotte	86,203	13	1,759	21
WBTW Florence	138,112	22	1,810	22
WSCS–TV Charleston	28,518	4	525	6
WCSC–TV (prop.)	164,655	25	2,079	25

*Square miles.

ABC NETWORK OVERLAP

Overlap from	Population	Precent	Area*	Percent
WOLO–TV (Grade B)	630,596		7,890	
WJBF Augusta	388,997	61	4,283	52
WCCB–TV Charlotte	84,631	13	1,786	23
WBTW Florence**	135,909	21	1,826	23
WUSN–TV Charleston	6,483	1	165	5
WUSN–TV (prop.)	123,213	21	1,557	22

*Square miles.
**Carries CBS programs only according to a recent survey; however, station has contract to also carry ABC network programs (Tr. 449–451, 459, 1152–1161).

[32] This area is comprised of portions of the following seven counties: Fairfield, Kershaw, Richland, Sumter, Calhoun, Clarendon, and Orangeburg (Appl. Ex. 22, Map D).
[33] The diminished area includes only portions of the counties of Fairfield, Kershaw, and Richland (Appl. Ex. 22, Map D).
[34] No showing was made of the population and area to which WNOK–TV and WIS–TV furnish the only network service.

NBC NETWORK OVERLAP

Overlap from	Population	Percent	Area*	Percent
WIS–TV (Grade B)	1,190,369		16,428	
WFBC–TV Greenville	125,391	11	2,188	13
WSOC–TV Charlotte	359,419	30	5,046	31
WECT Wilmington	117,246	10	1,576	10
WCIV Charleston	95,828	8	2,087	13
WCIV (prop.)	332,134	28	5,036	31

*Square miles.

The Wilmington, North Carolina and Augusta and Savannah, Georgia Areas [35]

36. *Wilmington.* The present Grade B contours of WCSC–TV, WCIV, and WUSN–TV fall 88, 90 and 95 miles, respectively, short of Wilmington and the proposed contours of the stations fall 46, 46 and 47.5 miles, respectively, short of the city. Wilmington has one unoccupied UHF commercial channel (Ch. 29) which is also the only commercial UHF channel assigned to the city. Assuming a prospective Channel 29 facility similar to that of UHF educational station WUNJ–TV (Ch. 39) in Wilmington, the present Grade B contours of the three Charleston commercial stations would not overlap the Grade B contour of such an operation. However, the proposed contours would overlap about 5% of the area.[36] The extent of overlap of the Grade B contour of a prospective Channel 29 facility by the Grade B contours of other commercial stations would be as follows: (Appl. Ex. 27, pp. 4, 5):

Station	Ch.	Location	Ch. 29 overlap (percent)
WNBE	12	New Bern, N.C.	40
WTVD	11	Durham, N.C.	25
WRDU–TV	28	do.	30
WRAL–TV	5	Raleigh, N.C.	(*)
WNCT–TV	9	Greenville, N.C.	5
WBTW	13	Florence, S.C.	15
WECT	6	Wilmington, N.C.	100
WWAY–TV	3	do.	100

*Less than 5 percent.

37. *Augusta.* The present Grade B contours of WCSC–TV, WCIV, and WUSN–TV fall 61.5, 62 and 62.5 miles, respectively, short of Augusta and the proposed fall 49, 49 and 50.5 miles, respectively, short of the community. Of the two UHF channels assigned Augusta, Channel 26 is utilized by WATU–TV and Channel 54 is unoccupied.

[35] Because of the lesser degree of impact on the UHF stations, present and prospective, in the three markets, engineering evidence is not as extensive as that submitted with respect to the Florence and Columbia markets.

[36] Assuming a prospective operation similar to VHF commercial stations WECT and WWAY–TV in Wilmington, present overlap would be less than 5% and proposed overlap would be less than 15%. The three Wilmington stations operate from three different transmitter sites as reflected in the respective contour configurations (Appl. Ex. 2, Figs. 1, 2; Appl. Ex. 20, Fig. 2A; Appl. Ex. 22, Fig. 3B; Appl. Ex. 27).

The present Grade B contours of the three Charleston commercial VHF stations overlap about 5% of the area within the WATU–TV Grade B contour. Operating as proposed, the Charleston stations would increase the overlap to 10%. Assuming an operation on Channel 54 similar to WATU–TV, the present and proposed overlap from the Charleston stations would be essentially the same. The Grade B contours of other existing commercial television stations overlap the Grade B contour of WATU–TV as follows: (Appl. Ex. 2, Fig. 2A; Ex. 27, pp. 5, 6).

Station	Ch.	Location	WATU-TV overlap (percent)
WIS–TV	10	Columbia, S.C.	35
WNOK–TV	19	do.	26
WOLO–TV	25	do.	25
WBTV	3	Charlotte, N.C.	(*)
WFBC	4	Greenville, S.C.	10
WSPA	7	Spartanburg, S.C.	10
WJCL	22	Savannah, Ga.	20
WSAV	3	do.	5
WTOC	11	do.	4
WMAZ–TV	13	Macon, Ga.	5
WJBF	6	Augusta, Ga.	100
WRDW–TV	12	do.	100

*Less than 1 percent.

38. *Savannah.* The present Grade B contours of Stations WCSC–TV, WCIV, and WUSN–TV fall 16, 17, and 19 miles, respectively, short of Savannah and the proposed fall 16, 16 and 17.5 miles, respectively, short of the community. The Grade B contours of the three Charleston commercial stations overlap the Grade B contours of Savannah UHF Station WJCL operating on Channel 22 equal to 15% of WJCL's Grade B area while the proposed contours would overlap 20% of such area. Channel 22 is the only UHF assignment in Savannah. The Grade B contours of other existing stations overlap the Grade B contour of WJCL as follows[37] (Appl. Ex. 27, pp. 6, 7):

Station	Ch.	Location	WJCL Overlap (percent)
WJBF	6	Augusta, Ga.	35
WRDW–TV	12	do.	35
WATU–TV	26	do.	30
WFGA	12	Jacksonville, Fla.	(*)
WJKS–TV	17	do.	(*)
WJXT	4	do.	(*)
WIS–TV	10	Columbia, S.C.	2
WSAV	3	Savannah, Ga.	(**)
WTOC	11	do.	(**)

*Less than 2 percent.
**Not given. WJCL Grade B contour includes all the area within the WSAV and WTOC–TV Grade B contours.

[37] No present or proposed Grade B overlap is involved with UHF Station WANC–TV in Asheville, N.C., or any prospective UHF stations in the Greenville-Spartanburg-Asheville area. No present or proposed Grade B overlap is involved with UHF Stations WCCB–TV and WCTU–TV in Charlotte, N.C. The Grade B contour of Station WIS–TV in Columbia, S.C., overlaps 30% of the Grade B area of UHF Stations WCCB–TV and WCTU–TV. UHF stations WNOK–TV and WOLO–TV in Columbia overlap 10% of WCCB–TV and 15% of WCTU–TV (Appl. Ex. 27, pp. 7, 8, 9).

Economic Information and Data Relating to UHF Impact Issue

39. The Area of Dominant Influence (ADI) of the Columbia, South Carolina, television stations consists of the "metro area," counties of Richland and Lexington (78,200 TV households) and the following additional counties (with the number of TV households shown in parentheses): Sumter (18,100), Orangeburg (16,500), Kershaw (8,700), Fairfield (4,400), Lee (4,200) and Calhoun (2,700) (Palmetto Ex. No. 1, p. 10). Clarendon County (5,400) had been in the Columbia ADI, but was shifted in 1969 to the Charleston ADI (Columbia Joint Ex. No. 2, pp. 1, 3, 10).

40. The distribution of the Columbia market television revenues and income for the years 1964 through 1969 is shown in the following table:

DISTRIBUTION OF COLUMBIA TELEVISION REVENUES AND INCOMES [38]

	Columbia	WIS-TV		WNOK-TV		WOLO-TV	
		Amount	Percent	Amount	Percent	Amount	Percent
B/c revenues:							
1969	$3,750,003	$2,799,751	74.7	$661,976	17.7	$288,276	7.7
1968	3,387,724	2,513,297	74.2	588,879	17.4	285,548	8.4
1967	2,864,911	2,148,759	75.0	490,985	17.1	225,167	7.9
1966	2,786,281	2,076,756	74.5	514,058	18.4	195,437	7.0
1965	2,492,795	1,885,127	75.6	423,328	17.0	184,340	7.4
1964	2,260,303	1,705,151	75.4	380,476	16.8	174,676	7.7
Network sales:							
1969	725,789	504,029	69.4	118,718	16.3	104,042	14.3
1968	734,810	521,353	71.0	107,541	14.6	105,916	14.4
1967	687,790	483,227	70.3	109,680	15.9	94,883	13.8
1966	662,732	446,141	67.3	110,408	16.7	106,183	16.0
1965	633,042	431,794	68.2	106,345	16.8	94,903	15.0
1964	574,663	394,898	68.7	102,819	17.9	77,246	13.4
Spot sales:							
1969	2,012,541	1,832,200	91.0	115,857	5.8	64,484	3.2
1968	1,684,947	1,528,723	90.7	102,918	6.1	53,306	3.2
1967	1,492,296	1,422,729	95.3	39,037	2.6	30,530	2.0
1966	1,534,107	1,456,109	94.9	45,225	2.9	32,773	2.1
1965	1,436,448	1,374,206	95.9	27,360	1.9	31,882	2.2
1964	1,259,207	1,209,098	96.0	29,037	2.3	21,072	1.7
Local sales:							
1969	1,313,180	724,016	55.1	465,370	35.4	123,794	9.4
1968	1,246,082	695,744	55.8	419,021	33.6	131,317	10.5
1967	988,809	537,245	54.3	350,329	35.4	101,235	10.2
1966	913,601	491,001	53.7	361,736	39.6	60,864	6.7
1965	740,066	380,804	51.5	299,848	40.5	59,414	8.0
1964	673,191	333,311	49.5	252,000	37.4	87,880	13.1
Income:							
1969	1,201,576	1,193,459	[39] 95.7	53,286	[39] 4.3	(45,169)	
1968	1,155,498	1,080,577	93.5	60,859	5.3	14,062	1.2
1967	967,915	909,115	[39] 91.3	86,888	[39] 8.7	(28,088)	
1966	1,077,046	929,800	86.3	138,982	12.9	8,264	.8
1965	951,853	856,504	90.0	90,740	9.5	4,609	.5
1964	695,054	668,314	[39] 92.0	57,859	[39] 8.0	(31,119)	

[38] Broadcast Revenues, Form 324, Schedule 1, line 19; Network Sales, line 6; Spot Sales, line 8; Local Sales, line 9 (1964–68); 1969 figures based on Statements of Messrs. Simpson and McElveen.
[39] Percentage based on total Income of WIS-TV and WNOK-TV.

41. The parties applicant as well as the parties respondent/intervenor engaged and produced, as skilled or expert witnesses, persons with respected credentials in the field of broadcast economics and related fields. Preserving time-tested prudent skepticism respecting testimony at variance or in conflict of those who may give opinion evidence

in fields of accepted or acknowledged expertise,[40] each expert opinion will be accorded that quantum of weight as findings which reason compels as warranted.

42. The parties respondent/intervenors' expert economist used as a primary benchmark of television viewing in Columbia, South Carolina, the following: (Columbia Joint Exhibit No. 2).

NUMBER OF HOMES VIEWING IN PRIME TIME COLUMBIA, S.C.—NOVEMBER 1968

Station	Metro area	ADI area	Survey area	Viewing beyond metro area
WIS	19,370	33,200	45,500	26,130
WNOK	12,665	14,606	15,200	2,535
WOLO	10,430	11,952	12,400	1,970

He concluded that WIS–TV is currently the cohesive force which defines the Columbia market and that a large part of the disparity in audience among the three resulted from disparity in these physical facilities. This, as a fact, does not seem open to question. He further concluded that until recently the UHF stations WNOK and WOLO, had attracted very little audience outside the metro area; and that this situation would improve due to the increase in the number of UHF receivers in the nonmetro areas and because of the recent improvement in facilities undertaken by both WNOK–TV and WOLO–TV. In his opinion, the principal area in which the Columbia UHF stations stand to gain from the recent improvement in facilities is in the four Columbia ADI counties of Sumter, Orangeburg, Calhoun and Lee, and in Clarendon County, which is now in the Charleston ADI. In these five counties, the combined share of viewing hours of the UHF stations increased from 2.6% to 4.1%. This gain was at the expense of WIS–TV and any gains the UHF stations make in the future will be at the expense of WIS–TV, in addition to people who had not previously been active viewers. Also, he expressed the view that if WNOK–TV and WOLO–TV have no additional VHF competition in the gain area during the next two years, their audience will continue to grow and their share of viewing hours will increase (Tr. 226, 232–234, 258; Columbia Joint Ex. No. 2, pp. 3, 5–8, 11, 12).

43. The following table shows the share of viewing hours in these five counties during 1968–1969 by county and by call letters:

[In Percent]

County	Columbia, S.C.			Charleston, S.C.			Florence, S.C.
	WNOK	WOLO	WIS	WUSN	WCIV	WCSC	WBTW
Sumter	3.1	5.0	65.5	2.1	0.4	0.7	22.1
Orangeburg	1.0	0.2	40.1	8.6	7.2	18.7	0
Calhoun	3.6	2.4	64.5	4.4	1.2	11.1	0
Clarendon	0	0	42.0	9.5	10.2	32.9	5.4
Lee	1.2	0.6	55.7	0	0	0	42.3

[40] See Chamberlayne Trial Evidence 2d Edition (Tompkins) 1936, pp. 944–946: Also Wigmore on Evidence 3rd Edition (1940), p. 578, Sec. 1908.

From this table, he pointed out that the Charleston television stations, without the increased coverage they now propose had made what he termed "significant penetration" into Orangeburg, Calhoun and Clarendon Counties. He indicated that he considered a 10% share of viewing hours significant. It is his thesis that if the Charleston television stations are permitted to improve their facilities as proposed, their increased coverage of the five counties will serve to keep Clarendon County in the Charleston ADI and to cause the other four counties to shift from the Columbia ADI to the Charleston ADI (Tr. 253–255; Columbia Joint Ex. No. 2, Table 7).

44. This in the expert's view would have a twofold adverse impact on WNOK–TV and WOLO–TV. First, the loss of the counties from Columbia's ADI would bring about a drop in national rank from 109 to 145. He asserts that national and regional spot advertisers "buy" the market's rank before they "buy" the station. He divided the national and regional spot sales for the Columbia market ($1.6 million) by the number of TV homes in the ADI to come up with a spot market value of $12.69 per TV home. He multiplied the number of TV homes in the five county area by this latter figure to come up with an estimated loss of national and regional spot revenue on the order of $600,000, as a result of the anticipated loss in national rank. In this connection, he noted that the difference in spot revenue between Columbia and the 145th market (Bakersfield, California) is $1,038,000. He admitted that the switch of the counties from the Columbia ADI to the Charleston ADI was only an assumption on his part and that if the assumption were shown to be invalid then the conclusions which were drawn from it were likewise invalid. He also admitted on cross-examination that the 65th market had spot revenues only $200,000 greater than Columbia (109th) and that Madison, Wisconsin, the 113th market, also had spot revenue almost $200,000 greater than Columbia. He conceded that in 1967, WIS–TV had 95% of the national spot revenue in the Columbia market and 90% in 1968. He also conceded that so long as WIS–TV maintained a 50% or better share of the viewing audience in a county, the county ADI would not shift. Despite his emphasis on the paramount importance national and regional spot advertisers place on national ADI rank, he admitted that there are other variables which prompt an advertiser to "buy" a market, e.g. markets where he has sales facilities (Tr. 263, 267–68, 270, 273–75, 281, 291, 351–52; Columbia Joint Ex. No. 2, pp. 15–16).

45. The second, and in the witness's opinion more important, adverse impact on WNOK–TV and WOLO–TV which he foresees is the loss of "potential gain" which would result in the increased signal penetration by the Charleston stations into the five counties. To estimate the amount of this loss of "potential gain," he used the following computation to arrive at a value per viewing home for WNOK–TV and WOLO–TV:

	WOLO	WNOK
Total revenue*	$286,000.00	$589,000.00
Quarter hour viewing**	12,400.00	15,200.00
Rev/OHV home	23.06	38.75

*FCC, 1968.
**Average prime time quarter hour. ARB November 1968.

He then made the following computation to arrive at his estimate of the "potential gain" in the five counties for WNOK–TV and WOLO–TV:

ESTIMATE OF VIEWING AUDIENCE AND REVENUE ACCRUING TO WOLO AND WNOK IN THE 5 COUNTIES

	WNOK	WOLO
(1) Total TV homes	46,600	46,600
(2) UHF penetration (percent)	.77	.77
(3) UHF homes	35,882	35,882
(4) Distraction (from Charleston station)	.12	.05
(5) Net UHF homes	31,576	34,088
(6) Metro rating	.17	.12
(7) Quarter hour viewing	5,368	4,090
(8) Value per home	$38.75	$23.06
(9) Revenue	$208,010	$94,315

(1) ARB Market Report, November 1969.
(2) Ibid.
(4) Weighted average based on data in Tables 5 and 7.
(6) ARB Market Report, November 1969.
(8) Based on revenue and average quarter hour viewing in prime time, November 1968. (Columbia Joint Ex. No. 2, pp. 17–19).

46. UHF set penetration in the five counties should increase in due course to the 96% penetration in the metro area. The switch of the five counties to the Charleston ADI would not mean the loss of all revenue from these counties to WNOK–TV and WOLO–TV. Each would still have some audience in the counties. It would not lower their network rates, but would prevent an increase. The "expert" believes that the Columbia and Charleston stations would split the predicted potential income for WNOK–TV and WOLO–TV in the five counties down the middle (Tr. 358, 359, 361, 362, 364, 365).

47. He conceded that Columbia built into it certain factors that will make it more prosperous than any other market in that particular region. Comparing it with Charleston, he stated that it was not a case of Columbia doing so well as it was a case of Charleston not doing as well. For example, Columbia has $10,133 per household spendable income as against $7,248 for Charleston. He agreed that if you are an advertiser you will pay to reach the homes with the higher spendable income. Again, Columbia had $322 million in consumer's spending income as against $192 million for Charleston in 1968, with retail sales of $273,510,000 as against $175,600,000 (Tr. 353–56).

48. The witness does not conclude that a grant of the Charleston applications would reduce WNOK–TV or WOLO–TV to profitless or

submarginal operations. Rather, he speaks in terms of a grant of the Charleston application "wasting" the approximately half-million dollars each has recently invested in improved facilities to expand and improve their coverage in the counties beyond the metro area. He concludes that each would remain "marginal" operations serving only the metro area.[41] He still adheres, however, to the opinion expressed in his report to the Commission on CATV that UHF cannot be encouraged by thwarting competition wherever it threatens to appear (Tr. 203; Columbia Joint Ex. No. 2, pp. 7, 21, 23).

49. Further the witness is of the view that the Florence, S.C. market has potential to support a profitable UHF station. He bases his view on the fact that Rovan of Florence, Inc. had filed for and had been granted a construction permit for Channel 15, despite the fact that the Commission cancelled the construction permit because of failure to construct. He opined that to the extent that the UHF stations in Columbia are successful, Florence would be ripe for the entry of UHF. He pointed to the existing hole in ABC coverage in the Florence area as encouraging to UHF entry. However, he indicated that a grant of the Charleston tall-tower proposals would cut in half the ABC "white area" and provide Florence itself with a Grade B VHF ABC signal. In his view, this would fatally injure the potential for UHF in Florence (Tr. 206, 1299, 1300; Columbia Joint Ex. No. 10, pp. 14–16).

50. Up to this point the opinion of the Respondent/Intervenor's expert is entitled to guarded endorsement as a qualified finding subject, of course, to the further test of qualification, modification or rejection when weighed, among other matters of record, against his brother opponent expert whose expertise covered the same general areas respecting the overall "impact" of a grant of the application on authorized and prospective UHF television broadcast stations in the area of concern.

51. In 1967 when WNOK–TV applied for authority to utilize a new transmitter in order to increase its power from 244 kw effective radiated power to one megawatt power, WNOK–TV did not at the same time apply to increase its antenna height. WNOK–TV could go to a maximum of 2,000 feet with power of 5 million watts. However, WNOK–TV could not afford to do so and was aware at the time of the plans of the Charleston television stations to propose a joint tall-tower (Tr. 402, 411; Palmetto Ex. No. 1, p. 4).

52. To justify WNOK–TV's need for increased revenues, the record indicates that in 1968 and 1969 Palmetto's profit levels, after taxes, were roughly equivalent to a 4% return on the depreciated value of tangible property and to 5 to 7% of gross receipts (less commission). These profit levels were too low; WNOK–TV must be able to give its stockholders a higher rate of return on their investment. A 10–12% annual return on investment represented the proper profit margin (Tr. 408–409, 1329–30; Palmetto Ex. No. 1, pp. 5–6).

[41] However, see paragraph 42 above where he said that their audience in these counties will increase and their share of viewing hours will increase if they have no additional competition for the next two years.

53. A further reason in support of WNOK–TV's need for increased revenue is the need for additional improvements in its facilities and to improve its local program service. WNOK–TV as presently constituted is equipped to feed news from Columbia, the State capital, to all parts of its service area and to originate news pickups throughout its entire service area. It broadcasts a substantial amount of public affairs programs, including several locally originated public affairs programs focusing on problems peculiar to the Midland South Carolina Area, state legislative problems and problems peculiar to metropolitan Columbia (Palmetto Ex. No. 1, pp. 7–8).

54. In an effort to increase its audience in the non-metro Columbia ADI counties, WNOK–TV has been undertaking promotional efforts to educate the public in these counties that they can now receive WNOK–TV, and what they must do to receive the signals. One of the most important factors in this effort is that for the first time it will be possible for the homeowner to receive signals from affiliates of all three networks without reorienting his antenna. Until now it was possible to receive all three networks only by orienting the antenna toward Columbia to receive WIS–TV (NBC) and toward Augusta or Florence for the other networks. Antenna rotors cost approximately $40–$60 and relatively few families in these counties have them (Palmetto Ex. No. 1, pp. 11, 13).

55. The 1969 Rand McNally Commercial Trading Atlas, a publication of wide acceptance in commercial circles, indicates that the Columbia Trading Area consists of the following counties: Richland, Lexington, Orangeburg, Kershaw, Calhoun, Fairfield, Bamberg, Barnwell, Allendale, Hampton, and Saluda Counties. Sumter is large enough to be recognized as a trading area of its own (Sumter, Lee and Clarendon Counties) but in fact Sumter is closely tied to Columbia (Palmetto Ex. No. 1, p. 16).

56. The 1969–70 Newspaper Circulation Analysis, published by Standard Rate and Data Service in August 1969, shows the following circulation figures (a blank indicates circulation of less than 5 per cent of the county homes):

County	Columbia newspaper circulation	Charleston newspaper circulation
Sumter	4,342	
Orangeburg	8,946	1,501
Kershaw	5,395	
Fairfield	2,648	
Lee	1,162	
Calhoun	733	
Clarendon (formerly Columbia ADI)	1,290	1,199

(Palmetto Ex. No. 1, p. 16)

57. When residents of Orangeburg, Sumter and the other smaller communities go to a larger city for shopping they tend to go to Columbia and advertisers in Columbia wish to encourage and develop that trend through advertising (Palmetto Ex. No. 1, p. 16).

58. The counties of Sumter, Orangeburg, Lee and Calhoun are not only physically closer to Columbia but also much closer economically to Columbia. Not only is this evident from the newspaper and radio preferences, and trading area data, that these counties are also oriented both culturally and politically far more to Columbia, the State capital, than to Charleston (Tr. 426–28; Palmetto Ex. No. 1, pp. 21–22).

59. The short-run effect of the switch of one or more of the Columbia ADI counties to the Charleston ADI would be the reduction of advertising dollars coming into Columbia from advertising such as soft drink companies, who have bottlers in both markets. In the long run, the companies would reallocate the county and the bottler to the Charleston market, or at least divide the advertising dollars between the two markets. When Clarendon County switched in 1969 from the Columbia ADI to the Charleston ADI, WNOK–TV lost some Coca-Cola revenue, but whether this was caused by the switch or whether there were other factors involved is not known. However, in 1969 WNOK–TV's local, national spot and network revenues all went up (Tr. 1352, 1391; Palmetto Ex. No. 2, pp. 5–6).

60. Among the various broadcast advertising techniques or criteria in recent years ADI has become a major marketing tool in national spot advertising. It is only a tool and is not used by advertisers to the exclusion of all other factors. Other factors, among many, which are considered are where the advertiser's product was distributed, whether the counties are rural or urban, etc. (Tr. 1427; Columbia Joint Ex. No. 11, pp. 1, 2, 5, 9).

61. The Columbia ADI has been dominated by WIS–TV until now, with WNOK–TV getting a very small share of the audience. It is here that WNOK–TV can be foreseen to have an opportunity to increase its share of the audience because of the attractiveness of CBS programming. In this connection, when WNOK–TV carried non-CBS programming in the afternoon it produced no national spot dollars. It may be anticipated that WNOK–TV's gain in national spot revenue will result from it increasing its share of existing advertising budgets, rather than by being able to develop additional dollars for the market. If the Charleston VHF stations brought substantially improved service into some of these counties, viewers would prefer the VHF signal over the UHF signal. This would reduce the potential of the UHF stations increasing their audience in these counties and could result in the counties shifting to the Charleston ADI. This could result in a reduction of total advertising dollars coming into the Columbia market on the order of 20–25% (Tr. 1416, 1431; Columbia Joint Ex. No. 11, pp. 10–14).

62. On the other hand, the great majority of advertisers are interested in circulation beyond a market's ADI. The fact that a market goes up or down in ADI ranking does not indicate whether the market's revenue is going up or down, that there are many other factors which enter into whether its revenue increases or declines (Tr. 1405, 1412–13).

63. In 1967, WOLO–TV added a new antenna, feed line and traplexer to eliminate technical deficiencies that were reducing its service

potential within the metro itself. A color film chain was added in 1967 to permit the station to broadcast color film for the first time. In the following year an additional video tape machine was added. But the major improvements came in 1969. Local live color and color video tape equipment were added, and the station's new high power transmitter was put on line in November. The modernization program has provided the station with the technical ability to provide Grade B or better service throughout most of the ADI. In addition, the station improved its studio and transmitter facilities in 1969 by moving out of the Nisson Hut in which it had started business into a new studio-transmitter building with modern facilities. WOLO–TV did not seek an increase in tower height. It decided to see what increased power would accomplish (Tr. 121; Columbia TV Ex. No. 1, p. 5).

64. In addition, WOLO–TV in 1969 expanded the amount and the quality of its local programming service, including the addition of two 25 minute locally produced news programs each day, Monday through Friday, and two 5 minute Community Bulletin Board programs scheduled immediately prior to the news program (Columbia TV Ex. No. 1, pp. 7–10).

65. WOLO–TV is seeking to upgrade its programming for the morning and late afternoon periods. Toward this end it has recently acquired the rights to two syndicated programs and a new film package (Columbia TV Ex. No. 1, pp. 10–11).

66. WOLO–TV expects its operating costs to increase from $308,000 in 1969 to approximately $387,500[42] (including "a reasonable profit on invested capital"). WOLO–TV is one of C. N. Bahakel's stations. An 8½–10% annual return on investment to WOLO–TV would contribute to its viability and to achieve that ratio it would cut expenses, including serious cutbacks in staff. Additionally, the station will have to earn another $152,000 to cover installment debt and interest. This would mean almost doubling WOLO–TV's 1969 revenues. Based upon its 1968 experience, WOLO–TV earned $23.06 annually from each TV home in its average prime time quarter hour audience. Thus, to achieve revenue sufficient to meet the level of expenses described, it would have to achieve an audience of 23,500 on an average prime time quarter hour basis; the November 1969 ARB figures showed WOLO–TV with 13,000 homes compared to 17,000 for WNOK–TV and 50,000 for WIS–TV. In 1970 WOLO–TV, it was projected, can increase the number of homes from 13,000 to at least 14,500, with a possibility of beating out WNOK–TV. The bulk of the homes diverted would be from WIS–TV (Tr. 147, 152–55, 172–74; Columbia TV Ex. No. 1, p. 12).

67. WOLO–TV could not in the near future increase substantially its yield per home from its average prime time quarter hour viewing audience and hence would have to emphasize increasing its total audience. One could not expect to achieve more than 12,500 homes in the metro area (WOLO–TV's November 1969 metro area homes totaled 9,634). Therefore, it seems reasonable to suggest that it would still need 11,000 homes[43] from the other counties in its service area. In Novem-

[42] A "guesstimate" rather than a hard estimate (Tr. 191).
[43] The witness thought this was an optimistic assumption for 1970 (Tr. 342).

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ber 1968 WOLO–TV had only 2,000 prime time quarter hour homes outside the metro area. The bulk of WOLO–TV's growth potential is located in the Columbia ADI counties of Sumter, Orangeburg, Lee and Calhoun, plus Clarendon County. These account for the bulk of TV homes outside the metro area which WOLO–TV can expect to serve for the first time with its new facilities. All told, there were 46,000 TV homes in this five county group in November 1968, of which 27,140 were UHF TV homes (Tr. 163; Columbia TV Ex. No. 1).

68. Though expressed by a lay witness, indeed an employee of WOLO's parent enterprise, as a tentative finding, loss of these counties would mean loss of "well-over half of all our out-of-metro ADI audience potential," that such a loss was "inevitable if we are faced with a VHF competitor in Charleston offering a satisfactory signal to these counties, the same network service, plus equal or better non-network product," and that, accordingly, "grant of the Charleston Tall-tower proposal would stunt our growth and prevent the station from achieving either its service goals or its legitimate economic aspirations" (Columbia TV Ex. No. 1, p. 9).

69. This witness resides in Charlotte, North Carolina, where he serves as station manager of WCCB–TV, Channel 18, Charlotte, North Carolina, another Bahakel station. His only connection with respect to WOLO–TV arises out of the fact that Charlotte is Bahakel's test point for programming and the personnel at the Charlotte station make programming recommendations to the other Bahakel stations (Tr. 175; Columbia TV Ex. No. 1, p. 1).

70. The President, General Manager and principal stockholder of WCSC, Inc., licensee of WCSC–TV, disputed the thesis of five critical counties and singled out the so-called critical counties which might shift to the Charleston ADI. That Orangeburg was part of the Columbia trading area and oriented more toward Columbia than towards Charleston (see paragraph —, above). That the principal population in Orangeburg County was in the City of Orangeburg, which is more closely oriented towards Columbia than the south and west sections of the county. The City of Orangeburg is substantially closer to the Columbia UHF sites (39 miles) and to the WIS–TV site (44 miles) than it is to the proposed Charleston joint site (76 miles). It is in the less populated southwest section of the county where the Charleston stations hope to make their gains in audience (Tr. 783; Appl. Ex. No. 4, pp. 21–22).

71. Even if the Charleston applications are ultimately granted, operation from the Charleston Tall-tower could not possibly commence before September 1972. This time-table prediction on procedural dates is based on the WSFA–TV UHF impact hearing (Docket 16894).[44] With this time-table, whatever gains in revenue are in fact realizable by the Columbia UHF stations as a result of their providing improved coverage to the five so called "critical" counties should be realized by the time the Charleston stations commenced operation from the joint tower. Any estimate as to how much of the increased revenues gain by this time would thereafter be lost as a result of operation from the Charleston joint tall-tower would be a pure guess. This was conceded by the Respondent's expert (Tr. 361–62; Appl. Ex. No. 4, p. 25).

[44] *Cosmos Broadcasting Corp.*, 21 FCC 2d 729.

72. According to the state message of Governor McNair. there were seven hundred and six million dollars in new, expanded industry, creating some additional 20,000 jobs in 1969. South Carolina's economy is seen as an expanding one, with nothing to prevent the rate of growth for the next ten years from equalling the rate for the past ten years (Appl. Ex. No. 4, pp. 30–31).

73. A group Research Manager of Edward Petry & Company, was retained by the Charleston applicants as a sponsoring witness in the nature of one entitled to more than ordinary lay weight to analyze the economic effects of their operating from the proposed joint tall-tower. The Petry Company is national sales representative for television and radio stations, including WUSN–TV. During the past eleven years he has been particularly concerned with the business ramifications of national spot advertising (Appl. Ex. No. 3, pp. 1–2).

74. He opined, although ARB's [45] ADI concept has tended to minimize the Total Survey Area (TSA) differences among markets, ARB still reports each station's audience in the total area. A comparison of TV homes in the Charleston and Columbia markets shows the following:

	TV homes metro area	TV homes survey area	TV homes outside metro	Percent TV homes outside metro
Charleston	85,600	325,000	239,400	74
Columbia	78,200	618,200	540,000	87

Thus, WIS–TV has the ability to deliver twice as much audience alone as any one of the Charleston stations. Accordingly, if he were buying the area of the United States that included South Carolina, he would automatically put WIS–TV on his list, without regard to ADI ranking or anything else (Tr. 901, 907; Appl. Ex. No. 3, p. 13).

75. According to Nugent, ADI rank is but one of many variables advertisers consider in market selection. Other measures which contribute to the attractiveness of "buying" Columbia are shown in the following table:

	Charleston	Columbia
Total survey area (1)	325,000 TV homes	618,200 TV homes.
Net weekly circulation (Dominant Station) (2).	154,000 (WCSC-TV)	230,000 (WIS-TV).
Net weekly circulation rank (1968) (3)	121	88.
Number of commercial stations (4)	3 VHF	1 VHF; 2 UHF.
Dominant station prime time households (5)	34,900 (WCSC-TV)	52,200 (WIS-TV).
Dominant station prime time households-rank (6).	127 (WCSC-TV)	81 (WIS-TV).
Dominant station share of total homes, prime time (7).	45 percent (WCSC-TV)	61 percent (WIS-TV).
Dominant station share of total homes, 9 a.m.—midnight (8).	48 percent (WCSC-TV)	70 percent (WIS-TV).

(Source: See appropriate notation under footnote [46])

[46] Source material for Table 9: (1) ARB, November 1969; (2) ARB, November 1969; (3) TMA, 1968; (4) SRDS, February 1970; (5) TMA, 1969; (6) TMA, 1969; (7) ARB, November 1969; and (8) ARB, November 1969.
(Appl. Ex. No. 3, p. 14)

[45] American Research Bureau (ARB) is an audience management and similarly oriented enterprise used widely in the broadcast business.

76. In terms of retail sales, Columbia had $5,754 per TV home as opposed to $4,732 for Charleston and $8,908 in consumer income per TV household as opposed to $7,877 for Charleston (Tr. 893).

77. In his opinion, only national spot revenues would be affected by a recomposition of the Columbia ADI. Based on data reported to the FCC for 1968, national spots accounted for approximately 17% of total revenues of the two Columbia UHF stations and local advertising contributed 60%.[47] This relationship is not abnormal for UHF stations, particularly in markets beyond the Top 100, and is not likely to change drastically in favor of national spot. While national spot has been increasing its contribution for these stations, local revenues have also grown in both share and dollar volume. This latter source of broadcast revenues has increased since 1965 from 58% to its present 60% level and by a dollar amount of about $200,000. Nationally, and especially among the smaller markets, the ratio of national to local dollars is changing. The major national accounts, while not necessarily budgeting fewer total dollars, are allocating more of their expenditures to the larger markets and less to the smaller ones. Increasingly, the cut-off-points of "Top 100" or "Top 50" are being narrowed. At the same time there has been a definite and increasing use of TV by local advertisers. These advertisers should continue to grow in importance both as a means of taking up any slack left by the departure of national accounts as well as providing new sources of revenue. The addition of essentially locally-oriented UHF stations in markets across the nation should accelerate this pace. In witness' opinion, it is quite likely that national spot will increase slightly the proportion that it contributes to the total of the Columbia UHF stations' revenues from the current 17% level. However, there are realistic limits. National spot for markets of the size of Columbia accounts for 38% of total billing. Pursuant to the changing character of TV advertising for markets below the Top 100, this figure is likely to decline. Since in the opinion of the applicants' national spot specialist, WIS–TV will continue to corner the bulk of national advertising, the 38% figure represents an absolute, if obtainable, ceiling for the Columbia UHF stations. Thus, in his views, local revenues will continue to be, for WNOK–TV and WOLO–TV, the principal source of income and the key factor in the success of their operations. However, based upon 11 years' experience in the field, he concluded that whatever happens from Charleston which might conceivably affect Columbia's ADI makeup will not have any effect upon the local revenues of the UHF stations. Exceptions notwithstanding, local advertisers do not predicate advertising decisions upon ADI delineations or rankings, he argued. A great many local advertisers do not consider audience measures of any kind, preferring to make their decisions according to program content, costs and other considerations, including personal ones. No better evidence of the difference in importance ascribed to audience measurements by national and local advertisers can be found than the Columbia UHF stations' own fi-

[47] These figures are based on financial information taken from the FCC Form 324 Reports for the Columbia stations. A compilation of this financial information is set forth on page 29, above.

nancial reports for 1968. These two stations combined earned three and one-half times more income from local advertising than from national accounts. Their share of the market's local advertising dollars was 44%, compared to less than a 10% share of the national figure (Tr. 912, 972, 974, 975; Appl. Ex. No. 3, pp. 16–18, 42).

78. The Columbia ADI market currently is composed of eight counties, two of which are Metro counties. It was created by and is a reflection of only one station—WIS–TV. Not only was this the case in prior years, but it is true today at a time when the two UHF stations are delivering their largest audiences in history. The following table shows that these eight counties would still be part of the Columbia ADI, even if there were no UHF stations on the air in the market.

Share of viewing hours—Columbia ADI ARB, 1969

County and stations:	*Share (percent)*
Richland (Metro):	
WIS–TV	53.1
WNOK–TV	26.8
WOLO–TV	18.6
Augusta[48]	.8
Lexington (Metro):	
WIS–TV	55.4
WNOK–TV	18.8
WOLO–TV	14.1
Augusta	11.0
Kershaw:	
WIS–TV	59.2
WNOK–TV	14.8
WOLO–TV	15.8
Florence	6.1
Fairfield:	
WIS–TV	52.8
WNOK–TV	9.6
WOLO–TV	4.6
Charlotte	19.8

County and stations—Continued	*Share (percent)*
Lee:	
WIS–TV	65.5
WNOK–TV	8.1
WOLO–TV	5.0
Florence	22.1
Sumter:	
WIS–TV	65.5
WNOK–TV	3.1
WOLO–TV	5.0
Florence	22.1
Orangeburg:	
WIS–TV	40.1
WNOK–TV	1.0
WOLO–TV	.2
Charleston	34.5
Calhoun:	
WIS–TV	64.5
WNOK–TV	3.6
WOLO–TV	2.4
Charleston	16.8

[48] Only that market accounting for the next largest share of viewing is included for each of the counties herein listed.

Source: ARB Coverage Study, 1969 South Carolina County Report.

(Appl. Ex. 3, pp. 20–22).

79. It is the opinion of the applicant's national spot specialist that since WIS–TV is the binding force that created and maintained the Columbia market, any realignment of the Columbia ADI would have to come at the expense of WIS–TV. Even the Respondent's expert conceded that the UHF stations have no effective presence in the so-called critical counties. Thus, although economic impact might result from a shift, it would be an impact on WIS–TV, not on WNOK–TV or WOLO–TV, the witness further concluded (Tr. 236; Appl. Ex. No. 3, p. 23).

80. Nor did he believe the audience in these five counties to be a consideration paramount over all others in the determination of either the future of Columbia's national spot or the viability of the Columbia UHF stations. However, to the extent that some potential audience lies in every county, he has examined the likelihood of these specific counties shifting to the Charleston ADI as a result of a grant of the Charleston maximum service tower. His analysis is set forth in Appendix IV.

81. To summarize his argument, what a buyer sees today is a market where WIS–TV has by far the largest share and, as the figures indicate, the buyer puts 90% of his money on that station. The Charleston proposed tall tower will reduce WIS–TV's dominance in the Columbia market. This will reduce its share of that market vis-a-vis WNOK–TV and WOLO–TV, making them more attractive to advertisers who will be disposed to give the UHF stations a greater share of their advertising dollar (Tr. 964–67).

82. The Charleston applicants also retained a consultant in the field of broadcast economics and broadcast station management operation to prepare an analysis of the economic impact of the Charleston proposed tall-tower on UHF stations (Appl. Ex. No. 14, pp. 1–3).

83. His contribution by way of expert analysis coincides with the applicants' specialist in national spot advertising, namely, that the economic viability of WNOK–TV and WOLO–TV will be determined almost exclusively by their ability to intrude upon the present dominant position of WIS–TV in the Columbia market. In his opinion, a grant of the Charleston application will have only a secondary or minimal impact upon the economic future of WNOK–TV and WOLO–TV. National advertising would have relatively small interest in WNOK–TV and WOLO–TV as TV media for the Columbia market because WIS–TV is so dominant at the present (Tr. 608; Appl. Ex. No. 14, p. 8).

84. He disputes the respondents' expert's prediction of loss of revenue based upon "revenue per home in the ADI market" multiplied by the number of TV homes in the counties which by the prediction would shift from the Columbia ADI to the Charleston ADI. That, in the final analysis, advertisers "buy" viewers and on a cost per thousand basis advertisers are primarily concerned with circulation which, in television, is measured by the total number of viewers. That Measured Total TV Home Circulation is the most significant revenue factor for all TV stations, regardless of the ADI TV Home County of its respective market. He does not know of a single television station that did not have circulation of considerable magnitude beyond its ADI (Tr. 650, 651; Appl. Ex. 14, pp. 9, 11, 13). The overall detail of his opinion of Respondents' expert's predictions is set out in Appendix V.

85. On the possibility of Orangeburg County being shifted from the Columbia ADI his views parallel those expressed by a principal of one of the Charleston applicants (Tr. 625, 626, 671; Appl. Ex. 14, pp. 17–18).

86. Beyond the foregoing, the following considerations had a bearing on the UHF impact issue, the applicants' expert opined. From 1963 to 1968, Columbia TV market total revenues rose by 54.5%. As

of 1968, local TV advertising produced $1,246,082 in income for the three Columbia stations, or 37% of total net broadcast revenues from all sources. From 1963 to 1968, local TV revenues rose by 64% in the Columbia market. This is compatible with national trends, which show that local TV advertising has been rising at a significantly faster rate than either network or national spot advertising. His view, it is untenable to argue that the Charleston TV stations (any or all) are likely to acquire local Columbia TV advertising, because of the distance from Charleston and the separateness of the markets. Additionally, in assuming the viability of WNOK–TV and WOLO–TV, growth in population and TV homes must be considered as well as the increase in all-channel receivers, which is expected to reach 95% by 1972. By 1972, which is the earliest the tall-tower proposal could be activated, the two UHF stations should make substantial advancement in audience development in all five "critical" counties and should by then be well entrenched within the viewing habits of the public in those counties. Both WNOK–TV and WOLO–TV have leeway both in terms of height and power to expand their total coverage area and to improve their signals within the expanded coverage area (Tr. 265, 661, 673–74; Appl. Ex. No. 14, pp. 19–21).

87. His opinion of the impact of the Charleston tall-tower proposal on UHF in markets other than Columbia is in a word, insignificant (Tr. 604–07, 1145–1146; Appl. Ex. No. 14, pp. 4–5).

THE EDUCATIONAL TELEVISION APPLICANT

88. One of the four applicants is South Carolina Educational Television Commission, the licensee of Educational Station WITV, operating on Channel 7, in Charleston, South Carolina. WITV holds a current authorization for 316 kilowatts ERP at 850 feet above average terrain (BMPET–663). The current authorization specifies the use of the tower of Station WCSC–TV, which is one of the three commercial VHF applicants in this proceeding. As a matter of fact, the three Charleston commercial stations have agreed to reimburse the Educational Television Commission up to a total of $75,000 for any expenses incurred in connection with completing the construction authorized at the WCSC–TV site, which are not recoverable in the event that the new facilities at the new site are authorized (App. Ex. No. 5, pp. 4–5).

89. The South Carolina Educational Television Commission has an extensive educational network throughout the State. This network consists both of closed-circuit operations covering over 250 secondary schools in South Carolina and also five educational television broadcast stations (including WITV), over which educational television programming is presented (App. Ex. No. 5, p. 1).

90. The principal television production center is located in Columbia and services both the closed-circuit system and the open-circuit network of the five television stations. Instructional materials are provided for the closed-circuit facilities to the secondary schools. The five broadcast television services meet some of the instructional needs of the elementary schools, and they also provide public cultural and informational television service during the evening hours. The closed-

circuit system serves mainly grades 9 through 12 and provides a maximum of six independent channels to these schools. A few of the programs broadcast over the television stations are also utilized in the secondary school system (Tr. 475–476).

91. The five television stations include WITV in Charleston, WJPM–TV on Channel 33 in Florence, WRLK–TV on Channel 35, Columbia, South Carolina, WEBA–TV in Barnwell on Channel 14, South Carolina, and WNTV on Channel 29 in Greenville, South Carolina. There also is a translator in Rock Hill, South Carolina, in the upper northern section of the State in York County (Tr. 480; App. Ex. No. 5; App. Ex. No. 20, Fig. 3B). The stations in Florence, Columbia, and Barnwell all provide a substantial amount of overlapping services among themselves; there is a small amount of overlapping service with the currently authorized facilities of WITV and a very substantial overlap of service areas with the WITV facilities proposed in the pending application (App. Ex. No. 22, Fig. 3B).

92. For the most part, all of the five stations broadcast simultaneously with the programming originating from the Columbia production center (Tr. 477–78). They provide, as indicated, educational programming basically for the elementary schools, of which there are 800 in the State (Tr. 478). From approximately sign-on time in the morning to 3 p.m., the programming is devoted to in-school course material for the grade schools. For an additional hour between 3 p.m. and 4 p.m., there is programming providing for "teacher in-service" continuing professional education training (Tr. 478–479). From approximately 4 p.m. to 7 p.m. the stations generally provide training programming, continuing professional education programming, and community-service programming. From 7 p.m. until sign-off at approximately 11 p.m., the stations provide general community service, public affairs, drama, music, and cultural programs, obtained from national educational sources and from the state's own local production center (Tr. 479).

93. In addition to the closed-circuit facilities and television stations owned by SCETV, the educational programming is also carried on a number of CATV systems within the State. Within the particular area here involved, there are five CATV systems located in the proposed Grade B contour of WITV, which in turn serve 12 schools in this area (App. Ex. No. 24, p. 1).

94. The SCETV Commission considered the prospect of operating from the tall-tower effort a most attractive opportunity for making more extensive availability of instructional and public television programs. As currently licensed with only 28.8 kilowatts ERP at 220 feet, the WITV coverage is quite limited, and there are large gaps in area between the present WITV contours and the contours of the nearby educational stations (App. Ex. No. 5, p. 3; App. Ex. No. 22, p. 2). However, since the original filing of the tall-tower application in February, 1968, SCETV has filed additional requests to improve its facilities and to move to the WCSC–TV tower, which applications have now been granted (BMPET–663 and BPET–358). The coverage has increased substantially under these new grants.

95. Examination of the contours authorized in the most recent grant, BMPET–663, shows that the presently authorized Grade B contours include almost *all* of the unserved areas between the licensed WITV Grade B contours (with low power and height) and the Grade B contours of the three neighboring stations which ring the WITV service area, WJPM–TV, WRLK–TV, and WEBA–TV (App. Ex. No. 22, Fig. 3B). In short, the hole in educational service has been filled in. The grant of the application now pending will not primarily serve new *unserved* areas, but rather will provide service to large areas already receiving service from the three existing stations, WJPM–TV, WRLK–TV, and WEBA–TV.

96. Evidence in the record establishes the number of persons and schools who will receive for the first time an off-the-air service from WITV. Under the currently authorized facilities, a Grade B service will be provided to 6,007 square miles and 398,728 persons (BMPET–663) (App. Ex. No. 22, p. 2). Under the proposal now pending here, a Grade B service will be provided to 9,374 square miles and 651,848 persons (BPET–323) (App. Ex. No. 22, p. 2). However, the vast majority of persons residing between the present and proposed contours are already receiving service from the three sister stations previously mentioned.

97. Accordingly, if BPET–323 were to be granted, an area of only 458 square miles would receive its first Grade B educational television service; and only 22,085 persons would receive a first educational service (App. Ex. No. 22, p. 2).

98. So far as the schools are concerned, the record shows the following: The total number of schools located within WITV's proposed Grade B contour, under BPET–323, is 386. Of this total, 228 are receiving or will receive the WITV service operating from the currently authorized facilities (BMPET–663). This leaves 158 schools in the gain area (App. Ex. No. 24, p. 4). Of the 158 schools in the gain area—that is to say, the area between the Grade B contour of WITV operating from the WCSC tower (BMPET–663) and the Grade B contour of WITV operating from the tall-tower (BPET–323)—143 are receiving service either from the closed-circuit facilities (47 schools) or from the three educational television stations which ring the WITV service area; namely, the Florence, Columbia, and Allendale stations (96 schools). Thus, of the total of 158 schools in the gain area, only 15 would be receiving a first educational television service facility (App. Ex. No. 24, p. 2; App. Ex. No. 28, pp. 1–2). Of these 15 schools, 4 schools are tied to a CATV system and hence are receiving the educational broadcasting service (App. Ex. No. 28, p. 1).

COMMUNITY SURVEY ISSUE

100. The Review Board added an issue to determine the efforts each of the three commercial stations had made to ascertain community needs and interests and the means by which each proposed to meet such needs and interests. The following paragraphs set out the pertinent evidence of record:

101. The Charleston applicants retained a Professor of Economics at the University of South Carolina, to prepare a demographic study

of the following South Carolina counties: Bamberg, Calhoun, Florence, Horry, Marion, Orangeburg and Sumter.[49] During the ten years he has resided in South Carolina, he had conducted studies of the labor force and other aspects of the South Carolina economy and has worked with a number of organizations concerned with the economic and social life of the state. His current areas of study include labor economics, managerial economics and industrial economics (App. Ex. No. 9, p. 1).

102. On December 31, 1969 the Professor submitted to each of the three commercial television stations a 73 page report to which were attached 37 tables detailing characteristics of the population in each of the seven counties. The data were largely quantitative, but the report also included other facts which provide understanding of the characteristics of the people in the seven counties and the environment within which they live. Social characteristics, such as age distribution of the population, marital status, educational attainment and racial distribution were included. In addition, the economic status of the people was described through data relating to industrial and occupational distribution of employment, labor force participation and income. References to the economic and social organizations of the area were included. Though meriting considerable weight to restrain the tendency of a decision of undue length, the gist of the Professor's report is set out in Appendix VI.

103. If granted authority to construct the tall tower, WCSC–TV proposes to do the following, among other things, to meet the problems and needs of the gain area:

I. Special Public Affairs Programs

(a) WCSC–TV currently produces twenty special affairs programs a year (30 and 60 minutes).[50] It proposes to increase this by a minimum of five if granted the tall tower, directing those five specifically to the most urgent needs of the gain counties. Its present ADI counties' needs coincide to some extent with the problems it has found in the gain area. so it estimates that at least half of the public affairs broadcasts would serve gain area needs. Examples of what it has in mind are 1) Point the way to better communication between races by a frank roundtable discussion between Negro and white leaders, including youth, concerning the main problems that exist between the races; 2) Bring to the attention of those who should know the facts and seldom encounter them the scope of adult under-education and the grim nature of pockets of poverty—pointing the way that something might be done about these matters; 3) A shock attack on street, roadside and personal property litter by showing pictorially what it all looks like throughout the area;

[49] The applicants' proposed gain areas cover portions of each of these counties.

[50] Some examples of recent special programs on WCSC–TV are (1) The story of a life of crime, murder and a life sentence, told by the criminal who also describes life in the penitentiary; warnings to local youth on same program by an ex-convict; (2) A demonstration of the slowed reaction of a person who has had "a couple of drinks" by means of testing reactions of several staff members before and during the course of several drinks "on air"; (3) An effort to let steam out of the boiler of local "long hair" high school students who were rebelling against school authorities by letting 11 present their views; (4) Film footage of many fatal traffic accidents and stories of the grimmest nature, told by the Highway Department, presented during December to forestall carelessness on the highways during the holidays.

4) Point up the ways that the individual adds to pollution by his personal habits in the home and in his daily activities—highlighting what can happen if it all continues; 5) Trace the careers of a Negro and a white young adult who left the area to find more opportunity but who have returned because there is a new day, a new opportunity. Present and talk with these people as well.

II. Spot Announcements

(b) WCSC–TV found in its survey of the gain counties that by far the most urgent needs exist among the more disadvantaged in education and work skills. The infrequency of public affairs and special programs limits its ability to deal effectively with these problems. Masses of people must be encouraged to change life-long habits, to assume new viewpoints, to resume or begin schooling, to remain in the area instead of leaving for other parts, to train and develop new skills, to work hard to upgrade jobs, to begin family planning, to handle more wisely limited resources, to stop littering, and so on. WCSC–TV proposes individual, locally-prepared, spot announcement campaigns scheduled on the scatter basis which, agencies have discovered, works so well. A substantial portion of the time of a veteran member of its staff, who already supervises public service activities, will be devoted to preparation of such announcement campaigns to meet the needs of the area we serve. WCSC–TV will be sensitive to gain county problems and interests when allocating time for public service broadcasts which have been produced outside the station. The person who allocates and schedules these prepared public service announcements and programs would be kept aware of the changing circumstances, so that needs could be met to the best of its ability.

III. Agricultural Programs and Information

(c) WCSC–TV believes that if its proposal is granted, it can persuade Clemson University Extension Service to go forward with a plan for Clemson to assign to the eastern Carolina counties a man who is an expert in both agriculture and broadcasting and who could work with Clemson's home economists. This person would also work with the county farm agents in the planning and preparation of television broadcasts. A program of this type would take a great burden of preparation off the county agents. The time, farm agents of WCSC–TV's area say, ideal for reaching the farm home is preceding its 7:00 a.m., CBS news, Monday through Friday, either 15 or 30 minutes, as needed by the Clemson Extension Service.

IV. Discussions and Talks

(d) When WCSC–TV commences the daily Monday through Friday farm and home economics broadcasts it will reassign the Saturday morning time of 7:00–7:30 a.m. now devoted to a farm and home program, for a weekly broadcast designed to meet the problems and needs of counties outside Charleston Metro. Its plan is to invite representa-

tives of various agencies and groups and endeavours to appear on this broadcast, selected on the basis of current problems and needs. For example, two Negro ministers whom it recently interviewed concerning private development of low income housing projects which they brought into being; the head of the eleven-county Boy Scout region in the Pee Dee (gain area) who says leadership among the disadvantaged and overadvantaged peoples is scarce; appropriate people from communities which have developed adequate Day Care Centers. WCSC–TV presently carries "*On Camera*" at 1:00–1:30 p.m., Monday through Friday, emceed for over ten years by a native of the gain area. WCSC–TV would encourage and take positive means of securing personalities from the gain counties to appear on "*On Camera.*" This program's audience consists of primarily women (although 25% surprisingly consists of men). This program will discuss problems such as the following: Family planning; management of resources; housing; recreation for youth; Day Care Centers; need for cleaning up; importance of tax increases in order to secure needed expansion of city services; and sensitive handling of the school integration system. Various problems can be met by the daily morning program, "*TV Party Line,*" Monday through Friday at 8:00–9:00 a.m. This is a potpourri of homemaking, gardening, parents guidance of youth, features on our black citizens, news, weather and country music, plus interviews with people on many current topics. The program segment of substantial interest to Negro members of WCSC–TV's audience consists of 5 minute vignettes written, produced and broadcast by a retired Negro school teacher, Mrs. Sadie Oglesby, a part-time member of its staff. Recognition is given to Negroes who are pursuing successful careers and making worthwhile contributions to the community. A suitable share of these broadcasts will be devoted to black residents of the gain area in order to motivate others, encourage them to remain in school, upgrade their work skills and endeavour to excel. Another program which will be expanded to include the interests of the gain counties is "*The South Carolina Capitol Report.*" It highlights the sessions of the South Carolina State Legislature which are of particular interest to its counties. Senators and Representatives from its area are interviewed on this program.

V. Other

(e) Additionally, WCSC–TV proposes to continue its news coverage and its editorials. These will be tailored to meet the needs and interests of the gain area as well as WCSC–TV's present service area (Appl. Ex. No. 11, pp. 3–15).

104. When WUSN–TV evaluated the information obtained as a result of the surveys described above and as a result of prior surveys, it concluded that the significant needs and interests of the gain area are as follows:

(1) A need for more industry.
(2) A need for better recreational facilities.
(3) A need for more job opportunities, especially for minority groups.
(4) Improved public transportation facilities are desired.
(5) Additional low-rent and low-cost housing is a necessity.

(6) Race relations need improving.
(7) Road and traffic problems need improving.
(8) More skilled, trained laborers are needed.
(9) More farm laborers needed.
(10) Vocational and adult training and education needed. Information regarding those programs that are available now must be disseminated.
(11) Better hospital facilities needed.
(12) Drug and drug abuse problems (Appl. Ex. No. 12, p. 1).

105. WUSN proposes to meet the needs and problems set forth above primarily through its regularly scheduled Public Affairs programming. Additionally, problems and needs of the area will receive regular coverage on local news programs. News "stringers" also furnish additional information from outlying counties to be used on WUSN-TV news programs. Short announcements (not PSA's), regularly-scheduled throughout the broadcast day, will also highlight principal needs and problems of the area. WUSN-TV's regular Public Affairs programs include the following:

Eye-Witness Report for Women, telecast daily, Monday through Friday, from 11:30-12:00 Noon. Interviews and panel discussions are conducted daily (in addition to regular segments of news and weather) and, as such, furnish an excellent opportunity for the discussion of relevant, pertinent local problems and issues.

Eye-Witness Essay, is a regularly-scheduled, monthly, 60-minute program, produced in its entirety by the staff of WUSN-TV. This Public Affairs program, always broadcast in prime time, presents in-depth analyses and discussions of the major problems of local (and, occasionally, national and international) import. Pressing, widespread problems of the WUSN-TV coverage area will be examined and discussed on this program.

Jaycees in Action. A weekly 30-minute Public Affairs program produced by local Jaycees. The format is devoted to a discussion of pertinent issues and problems and will provide an additional means of presenting relevant problems of the local area. The program is telecast each Sunday afternoon at 1:30 p.m. (Appl. Ex. No. 12, pp. 1-3).

106. When WCIV evaluated the information obtained as a result of the surveys described above and as a result of prior surveys, it concluded that the significant needs and interests of the gain area are as follows:

(1) Job opportunities through industrial expansion, and relocation.
(2) Crop diversification—from tobacco, cotton, soybeans, to dairying—poultry, other livestock production.
(3) County and community planning needed to provide more adequate low-cost housing facilities.
(4) Establishment of hard-working, effective bi-racial committees to help solve civil rights, educational problems.
(5) Expansion of adult-education, technical training facilities to up-grade and qualify Negro work force for industrial job potential. Also need to develop means to motivate Negro and poor white enrollment.
(6) County-by-county re-evaluation of tax base—presumably increasing same to finance community improvements, services.
(7) There must be a socially and economically suitable method to set up and enforce equal employment practices.
(8) Improved military housing conditions are needed.
(9) Increased public recreation programs, facilities (Appl. Ex. No. 13, p. 1).

107. First Charleston Corporation proposes to telecast the following programs with respect to the ascertained significant needs and interests of the gain area: Specific programs and program series designed to supplement WCIV's present schedule—and which respond to the ten-county gain area survey—will be developed largely by the Department of News & Public Affairs. For example, all of WCIV's regularly scheduled news coverage has presently been expanded to include local events occurring in outlying communities, as a result of earlier surveys made in connection with its renewal application and the present application. This expanded news coverage will be further enlarged to cover the gain counties. Additional news personnel and equipment will be needed for this effort, and these requirements are currently under study. In addition, specific gain area problems relating to industrial expansion, job opportunities, taxation, and school integration and consolidation will be extensively treated on WCIV's regularly scheduled daily discussion/interview series, "Charleston Showcase." Guest interview lists for this series will be expanded to include civic, governmental, business, and racial leaders from the communities within the gain counties. To answer the need for communication concerning the severe agricultural problems prevalent in the gain counties, e.g., economic problems faced by small farmers such as loss of labor force to industry and the cost-price squeeze, special attention will be provided toward the preparation of a weekly half-hour agricultural series, to be scheduled at a convenient rural viewing time period. Produced by WCIV News in cooperation with Clemson University, this weekly half-hour series will deal with specific critical problems, such as: crop diversification; improved per-acre yields; the establishment of farm machinery pools (essential to the small farmer); farm labor scarcity; and other major problems besetting the South Carolina farmer today. Major emphasis will be directed in the area of civil rights, equal employment opportunities, and low-income adult education and technical training needs. In the regard, the station will utilize the assistance of civil rights leaders and State Technical Center administrators in producing documentary program "specials," aimed at improving race relations and employment practices within the present and contemplated Grade B coverage area (Tr. 1009, 1011; Appl. Ex. No. 13, pp. 2–3).

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS

1. This proceeding is designed to (a) explore the impact that an expansion in the facilities of WUSN-TV (Ch. 2), WCIV (Ch. 4), and WCSC-TV (Ch. 5), the three commercial VHF television stations in Charleston, South Carolina, would have on the ability of authorized and prospective UHF stations in the area to compete effectively and the effect of such competition on the continuance of operation by existing UHF stations; and to (b) determine the efforts made by the three stations to ascertain the community needs and interests of the area to be served and how such needs and interests would be met. With respect to the impact aspects of this proceeding, the greater

effect will be on authorized and prospective UHF stations in Florence and Columbia, South Carolina, and to a lesser degree on such stations in Wilmington, North Carolina, and Augusta and Savannah, Georgia.

A. Technical Considerations

2. Charleston is a city of 65,925 persons centrally located on South Carolina's east coast. Charleston is the seat of Charleston County (pop. 216,382) and the central city of the Charleston Urbanized Area (pop. 160,113) and the Charleston Standard Metropolitan Statistical Area (pop. 254,578), the latter consisting of Charleston and Berkeley Counties. Of the four television channels allocated to the city, WUSN-TV, WCIV, and WCSC-TV occupy three of the Channels and are affiliated with the ABC, NBC and CBS networks respectively. The fourth, Channel 7, is utilized by WITV, a noncommercial educational station.

Coverage—Charleston Stations

3. The four Charleston stations operate at individual sites located from one to seven miles east of the city; however, under the proposals herein the four stations will move to a common site about 20 miles northeast of Charleston and use a joint 2,000 foot tower to support the transmitting antennas. Specifically, the changes are as follows: WUSN-TV—from 100 kw/790 ft. to 100 kw/1860 ft.; WCIV—from 100 kw/940 ft. to 100 kw/1950 ft.; WCSC-TV—from 100 kw/1000 ft. to 100 kw/1950 ft., and WITV—from 28.8 kw/220 ft. to 240 kw(hor.), 316 kw(max)/1720 ft. In each instance, operation as proposed makes use of maximum allowable effective radiated power and near maximum permissible antenna height above average terrain.

4. Since the Charleston stations are located on the coast, approximately half of an otherwise circular area within the respective predicted Grade B contours falls in the Atlantic Ocean. The land areas encompassed by the present and proposed Grade B contours lie entirely in South Carolina. The proposed expansion of the Grade B coverage areas will not result in the loss of any existing Grade B service now provided by the Charleston stations. In substantial part the proposed gain areas are the recipients of from two to three Grade B services from stations in other cities—other portions receive at least five such services.[51] The Grade B contours of four ABC affiliated stations[52] overlap the Grade B contour of WUSN-TV, the ABC affiliate in Charleston, the greatest overlap being 14.8%; four CBS affiliated stations similarly overlap WCSC-TV, the CBS affiliate in Charleston, the greatest overlap being 17.3%; three NBC affiliated stations similarly overlap WCIV, the NBC affiliate in Charleston, the greatest overlap being 30.6%. The following table summarizes the statistical Grade B coverage data for the three commercial VHF stations in Charleston:

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[51] Unless otherwise noted, the term "service" as used herein means that the station provides at least predicted Grade B coverage.

[52] One of the four, Station WBTW in Florence, actually carries CBS programs but has an ABC contract also.

	Population			Area (sq. mil.)		
	WUSN-TV	WCIV	WCSC-TV	WUSN-TV	WCIV	WCSC-TV
Present	436,898	461,628	470,550	6,467	6,820	7,233
Proposed	781,033	803,902	803,902	10,600	11,233	11,233
Gain	344,135	342,274	333,352	4,133	4,413	4,000
First ABC	130,780			1,730		
First CBS			22,132			234
First NBC		3,046			140	

NOTE.—First 3—network service to 159,333 persons in 1,829 square miles.

5. In the case of WITV, the noncommercial educational VHF station in Charleston, the proposal will expand Grade B coverage from 398,728 persons in 6,007 square miles to 651,848 persons in 9,374 square miles for a gain of 253,120 persons and 3,367 square miles. The proposed expansion would provide a first noncommercial educational service to 22,085 persons in an area of 458 square miles.

Impact on UHF—Florence, South Carolina

6. Florence, a city of 24,722 persons and the seat of Florence County (pop. 84,438), has one VHF television station—WBTW, and a noncommercial educational UHF station—WJPM-TV. Two UHF channels (15 and 21) allocated to the city are presently unoccupied. Florence is situated about 95 miles north of Charleston and 72 miles east northeast of Columbia. Although not part of any urbanized area or standard metropolitan statistical area, the city is the hub of the Florence Area of Dominant Influence (ADI) which spans a six-county area.

7. The Grade B contour of the three Charleston commercial VHF stations presently fall at least 26.5 miles short and to the south of Florence and overlap no more than 5% of the Grade B service areas of prospective UHF stations on Channels 15 and 21 assuming operations similar to deleted WPDT, a UHF station formerly authorized in Florence. The proposed Grade B contours would extend 2.5 to 4 miles beyond and to the north of Florence providing Grade B service to the community and overlapping about 40% of the Grade B service areas of the prospective stations. The Grade B coverage areas of the assumed prospective UHF stations in Florence would lie entirely within the Grade B contour of WBTW (VHF); additionally, portions of such areas would be included within the Grade B contours of nine VHF stations and four UHF stations so that in the aggregate Grade B service would be available in any one part from two to eight stations. All of the prospective UHF service areas receive CBS network service from WBTW and in part from two other CBS affiliates. Three NBC and three ABC network affiliates also serve portions of the areas. Two of the VHF stations, WIS-TV in Columbia, South Carolina, and WECT in Wilmington, North Carolina, include Florence within their respective Grade B contours. WIS-TV and WECT are both NBC affiliates. The extension of the Grade B coverage areas of the three Charleston commercial VHF stations will provide Florence with three new network services including a first ABC network service from WUSN-TV.

8. Of the six counties comprising the Florence Area of Dominant Influence (ADI), three are penetrated for the first time by the Grade B contours of the three Charleston commercial VHF stations operating as proposed. The three counties are: Florence (pop. 84,438), Darlington (pop. 52,928), and Marion (pop. 32,014); their respective county seats are: Florence (pop. 24,722), Darlington (pop. 6,710), and Marion (pop. 7,174). WBTD in Florence and the two assumed prospective UHF stations provide a Grade B signal over all three counties and a principal city grade signal over their respective county seats. With respect to Florence County, VHF Station WIS–TV places a Grade B signal over 90% of the area including the county seat and VHF Station WECT encompasses 70% of the area including the county seat. Proposed WUSN–TV would serve about 95% of the area and population including the county seat. Similarly, proposed WCIV and WCSC will serve about 97% of the area and population including the county seat. All of Darlington County is within the Grade B contour of WIS–TV and the county seat is within the station's Grade A contour. WECT's Grade B contour encompasses over 40% of the area including the county seat. Proposed WUSN–TV will provide Grade B coverage to 7% of the area and 10% of the population but not the county seat; proposed WCIV and WCSC–TV will serve 10% of the area and 12.5% of the population but not the county seat. As to Marion County, WIS–TV provides Grade B coverage to over 20% of the area but does not include the county seat; WECT's Grade B contour includes the entire county and VHF Station WWAY–TV in Wilmington, North Carolina provides Grade B coverage to 40% of the area but not the county seat. Proposed WUSN–TV will include within its Grade B contour 70% of the area and 54.5% of the population including the county seat; proposed WCIV and WCSC–TV, 75% of the area and 72.4% of the population including the county seat.

Impact on UHF—Columbia, South Carolina

9. Columbia, a city of 97,433 persons, is the county seat of Richland County (pop. 200,102); the state capital, the central city of the Columbia Urbanized Area (pop. 162,601); and the central city of the Columbia Standard Metropolitan Statistical Area (pop. 260,828) comprised of Richland and Lexington counties. The city lies near the center of the state 102 miles northwest of Charleston and 72 miles west southwest of Florence. Television authorizations in Columbia include one commercial VHF station—WIS–TV (Ch. 10), two commercial UHF stations—WNOK–TV (Ch. 19) and WOLO–TV (Ch. 25), one educational UHF station—WRLK–TV (Ch. 35). UHF Channel 57 assigned to the community is presently unoccupied.

10. The Grade B contours of the three Charleston commercial VHF stations presently fall 36 to 38 miles short and to the southeast of Columbia and overlap 5 to 6% of the Grade B service areas of WNOK–TV and WOLO–TV. These two UHF stations in Columbia have substantially the same coverage areas and it is assumed that a prospective Channel 57 station would provide similar coverage. The Grade B contours of the three Charleston stations operating as proposed would fall 14.5 to 16 miles short and to the southeast of Columbia overlapping

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22 to 24% of the Grade B service areas of Columbia's two UHF stations. Areas to the east, southeast, and south of Columbia would be located within the Grade B contours of the three Charleston stations for the first time.

11. WNOK–TV initially commenced operation in September of 1953. At that time Grade B coverage extended to 342,102 persons in 3,529 square miles. In June of 1961 Grade B coverage expanded to 474,978 persons in 4,817 square miles—a gain of 132,876 persons in 1,288 square miles. A further expansion in July of 1968, the present mode of operation, permitted WNOK–TV to include 635,223 persons in 8,137 square miles within its Grade B contour for an additional gain of 160,245 persons in 3,320 square miles. Similarly, when WOLO–TV began transmitting in September of 1961, the station provided Grade B coverage to 330,615 persons in 3,353 square miles. In August of 1964 the station's coverage was enlarged to include 444,176 persons in 4,706 square miles for a gain of 113,561 persons in 1,353 square miles. The present mode of WOLO–TV's operation dates back to November of 1969 at which time Grade B coverage increased to 630,596 persons in 7,890 square miles or a further gain of 186,420 persons in 3,184 square miles.

12. WIS–TV, Columbia's only VHF station, initiated operation in November of 1953—competing immediately with WNOK–TV and later with WOLO–TV when that station commenced operation in 1961. A change in the WIS–TV facilities in November 1964 increased Grade B coverage from 681,717 persons in 9,073 square miles to 1,190,369 persons in 16,428 square miles for a gain of 508,652 persons in 7,355 square miles. From the very beginning the Grade B contour of WIS–TV always completely enveloped the Grade B contours of WNOK–TV and WOLO–TV. WIS–TV's Grade B contour penetrates the counties of Colleton, Dorchester, and Berkeley in South Carolina which are adjacent to Charleston County and part of the Charleston ADI and reaches to within 30 miles of Charleston. The Grade B contour of this station includes 21.7% of the area of Charleston ADI, 46.3% of the Augusta ADI; 96.3% of the Charlotte ADI, 72.1% of the Florence ADI, 22.4% of the Greensville-Spartanburg-Asheville ADI, and all of the Columbia ADI.

13. As noted, WIS–TV's Grade B contour includes all the area within the Grade B contours of the present/prospective UHF stations in Columbia. Thirteen stations provide Grade B coverage to portions of these areas and together with WIS–TV make available from one to seven services therein. Apart from the service provided the city by the three local commercial stations, Columbia receives Grade B coverage from VHF stations, WJBF and WRDW–TV and UHF station WATU–TV, all in Augusta.

14. Three ABC affiliated stations [53] place their Grade B contours over portions of the Grade B coverage area of UHF station WOLO–TV, the ABC affiliate in Columbia. Proposed WUSN–TV would provide Grade B service to 22% of the area and 21% of the population

[53] WBTW in Florence also has an ABC affiliation contract, but actually carries CBS programs under its primary network agreement.

therein, an increase from its present service to 5% of the area and 1% of the population.

15. Five CBS affiliated stations provide Grade B coverage to portions of the Grade B service area of UHF Station WNOK–TV, the CBS affiliate in Columbia. Proposed WCSC–TV would provide Grade B service to 25% of the area and population, an increase from its present service to 6% of the area and 4% of the population.

16. Four NBC affiliated stations place their Grade B contours over portions of the Grade B service area of VHF Station WIS–TV, the NBC affiliate in Columbia. Proposed WCIV would provide Grade B service to 31% of the area and 28% of the population, an increase from its present service to 13% of the area and 8% of the population.

17. Columbia presently receives the programming of all three networks from its local stations, and, in addition, receives ABC programs of Grade B or better quality from VHF Station WJBF in Augusta and CBS programs of similar quality from VHF Station WRDW–TV in Augusta. The three Charleston stations do not provide network service to Columbia at the present time and would not under their respective proposals.

18. As WNOK–TV/WOLO–TV perceive it, maximum impact on their UHF operations from the expansion of the VHF facilities of the Charleston stations would occur in a five-county area in South Carolina where the Columbia UHF stations now provide Grade B coverage to all or part of the several counties. Four of the counties—Calhoun, Lee, Orangeburg, and Sumter—are part of the Columbia ADI; the fifth county—Clarendon—is in the Charleston ADI. The Columbia stations (WIS–TV, WNOK–TV, WOLO–TV) contend that, considering the quality of the signals now present in the various county seats from UHF stations WNOK–TV and WOLO–TV, there would be a tendency on the part of viewers to install more efficient receiving antennas oriented toward Columbia, and that should the Charleston stations be permitted to improve their transmitting facilities as proposed herein, the present advantage of the two UHF stations would be materially decreased.

19. Calhoun County (pop. 12,156); Seat—St. Matthews (pop. 2,433). WNOK–TV and WOLO–TV Grade B contours include all of Calhoun County and, respectively, provide St. Matthews the county seat, with principal city grade and Grade B signals. WIS–TV, the VHF station in Columbia, also serves the entire county and furnishes a principal city grade signal in St. Matthews. VHF stations WJBF and WRDW–TV in Augusta both obtain Grade B coverage of the county seat and 95% and 85%, respectively, of the county area. With respect to the Charleston VHF stations, service is and will be furnished this county as follows: WUSN–TV—5% to 68% (pop. nil to 81%); WCIV—8% to 75% (pop. 4% to 85%); WCSC–TV—10% to 75% (pop. 9% to 85%). Likewise, the Grade B contours of the three Charleston stations which now fall 11 to 14 miles short of St. Matthews will extend 7.5 to 9 miles beyond the city under the operations proposed herein.

20. *Lee County (pop. 21,832); Seat—Bishopville (pop. 3,586).* WNOK–TV and WOLO–TV both provide Grade B coverage to about 90% of Lee County (91% of population) and to Bishopville, the county seat. On the other hand, WIS–TV, Columbia's VHF station, and WBTW, the VHF station in Florence, both include the entire county with their respective Grade B contours and provide principal city grade coverage of the county seat. The Grade B contours of the Charleston stations do not penetrate the county; however, operating as proposed the following proportions of the county would be included by the Grade B contours of these stations: WUSN–TV 43% (pop. 33%); WCIV/WCSC–TV—50% (pop. 43%). The proposed Grade B contours of WUSN–TV, WCIV, and WCSC–TV fall short of the county seat by 3 to 4.5 miles.

21. *Orangeburg County (pop. 68,559); Seat—Orangeburg (pop. 13,852).* WNOK–TV and WOLO–TV both provide Grade B coverage to about 80% of Orangeburg County area and population and to Orangeburg, the county seat. WIS–TV serves all of the county and furnishes a principal city grade signal in the city of Orangeburg. VHF stations WJBF and WRDW–TV provide Grade B coverage to the county seat and to 80% and 75%, respectively, of the county area. In the case of the Charleston VHF stations the present and proposed county Grade B coverage follows: WUSN–TV 40% to 72% (pop. 32% to 85%); WCIV—45% to 75% (pop. 35% to 86%); WCSC–TV—45% to 75% (pop. 37% to 86%). While the present Grade B contours of these Charleston stations fall 6.5 to 8.5 miles short of the county seat, the proposed Grade B contours include the city and extend some 8 to 9.5 miles beyond. At present, receiving antennas in Orangeburg are generally directed toward the television stations in Augusta with only a few antennas oriented toward Charleston.

22. *Sumter County (pop. 74,941); Seat—Sumter (pop. 23,062).* WNOK–TV and WOLO–TV both provide Grade B coverage to the city of Sumter and to about 90% of the Sumter County area. Populationwise, the WNOK–TV and WOLO–TV coverage extends respectively, to 97% and 96% of the county population. WIS–TV provides Grade B coverage to all of the county and a principal city grade signal to the county seat. VHF station WBTW in Florence provides Grade B coverage to the county seat and to 90% of the county area. The present Grade B contours of the Charleston VHF stations do not reach as far as Sumter County; however, the proposed Grade B contours of these stations include the county seat and proportionately include the following county areas and populations: WUSN–TV—85% (pop. 89%); WCIV—90% (pop. 94%); WCSC–TV—90% (pop. 94%). Many receiving antennas in Sumter are directed toward Florence.

23. *Clarendon County (pop. 29,490); Seat—Manning (pop. 3,917).* WNOK–TV and WOLO–TV both provide Grade B coverage to Manning and include within such contour, respectively, 45% and 40% of the county area and 54% and 43% of the population therein. WIS–

TV provides Grade B coverage to the entire county and a principal city grade signal in Manning. VHF station WBTW in Florence provides Grade B coverage to the county seat and to 70% of the county area. The Charleston VHF stations furnish Grade B coverage to the county seat and to the county as follows: WUSN-TV—48% (pop. 41.5%); WCIV—65% (pop. 68.1%); WCSC-TV—65% (pop. 74.2%). Operating as proposed, the Grade B contours of each of the three stations will encompass all of the county.

24. When WNOK-TV commenced operation in September of 1953, its Grade B contour was overlapped only by the Grade B contour of WBTV, a VHF station in Charlotte, North Carolina. The overlap included 19,961 persons in 524 square miles or 5% of the population and 15% of the area within WNOK-TV's Grade B contour. Thus, WNOK-TV provided the only Grade B coverage to 322,141 persons (95%). Two months later WIS-TV began operation on VHF Channel 10 in Columbia. The Grade B contour of this station encompassed all of the WNOK-TV coverage area. In 1954 the Grade B contours of WRDW-TV and WJBF, two VHF stations in Augusta and the Grade B contour of WBTW, a VHF station in Florence, penetrated the WNOK-TV coverage area to within 11.5, 2.5 and 17 miles, respectively, of Columbia. A substantial portion of the WNOK-TV Grade B coverage area was then overlapped by the Grade B contours of stations in other cities. In 1957, VHF station WSOC-TV in Charlotte provided Grade B overlap in the area similar to that of WBTV, the other VHF station in Charlotte. In 1958, WJBF in Augusta expanded its coverage to extend the station's Grade B contour about 10 miles beyond Columbia resulting in the major portion of WNOK-TV's Grade B coverage area being overlapped by the coverage areas of stations in other cities. In 1961 when WOLO-TV began operation in Columbia on Channel 25, its Grade B contour was entirely within the like contours of WNOK-TV and WIS-TV and in part by that of four other stations. A number of stations changed facilities since 1961 with resultant enlargement of overlap areas. WNOK-TV changed facilities in 1961 and in 1968 and WOLO-TV made changes in 1964 and 1969. The present Grade B coverage areas of WNOK-TV and WOLO-TV are essentially the same and lie entirely within the Grade B contour of WIS-TV and partly within the Grade B contours of six other stations. There is a population of 18,481 persons or about 3% of the population served by WNOK-TV/WOLO-TV not included by the Grade B contours of stations in other cities. This would be reduced by 2,300 persons to 16,181 persons or 2.5% should WCSC-TV or WCIV be authorized to operate as proposed herein. *Impact on UHF—Wilmington, North Carolina and Augusta and Savannah, Georgia.*

25. The extent to which the present and proposed Grade B coverage areas of the three Charleston commercial VHF stations overlap the Grade B coverage area of present and assumed prospective UHF stations in the three cities is summarized in the following table:

Overlap of Grade B Coverage Area

[In percent]

	Wilmington (Ch. 29) *	Augusta (Ch. 26, 54) **	Savannah (Ch. 22) *
Charleston (pres.)	0	5	15
Charleston (prop.)	5	10	20

*Unoccupied
**Ch. 26—WATU-TV; Ch. 54—unoccupied

The local VHF stations in Wilmington and Augusta in each instance provide Grade B coverage to the entire Grade B coverage areas of the existing/prospective UHF stations. The VHF stations in the two cities are as follows: Wilmington—WWAY-TV (Ch. 3) and WECT (Ch. 6); Augusta—WJBF (Ch. 6) and WRDW-TV (Ch. 12). In the case of Savannah, the Grade B coverage areas of WSAV-TV (Ch. 3) and WTOC-TV (Ch. 11) are entirely encompassed by the Grade B contour of the UHF station, WJCL (Ch. 22).

26. In the Order designating the Charleston applications for hearing the Commission emphasized that while it "encourages television broadcast stations to operate with maximum facilities in order to make the most efficient use of the channel assignments" it also was concerned with "fostering the development of UHF broadcasting." Impact of the Charleston VHF station proposals on existing and prospective UHF stations in the Wilmington, North Carolina and Augusta and Savannah, Georgia areas was shown to be relatively small. Of greater magnitude and of more significant concern is the proposed expansion of VHF service in areas served by existing/prospective UHF stations in Florence and Columbia.

27. Adverse to a Florence UHF station would be the following considerations:

(a) The three Charleston commercial VHF stations would for the first time provide Grade B coverage in Florence.

(b) Grade B area overlap of prospective Florence UHF stations operating on channels 15 and 21 by the three Charleston stations would increase from the present 2 to 5% to approximately 40%.

(c) The addition of the proposed VHF service in areas receiving two and three Grade B services may tend to discourage potential applicants for a second or third commercial station in Florence, a city of nearly 25,000 persons.

(d) The three Charleston commercial VHF stations will for the first time provide Grade B coverage to three Florence ADI counties: Florence County—95 to 97% of the population including the county seat; Marion County—54 to 72% of the population including the county seat; Darlington County—10 to 12% of the population but not the county seat.

(e) NBC network reception service is available to Florence from WIS-TV in Columbia and WECT in Wilmington and CBS network reception service from WBTW, the local station in Florence. WUSN-TV operating as proposed would provide Florence and a substantial part of the Grade V service area of a prospective UHF station therein with a first ABC network reception service. The availability in the area of all three network services may deter a potential applicant for a UHF facility in Florence. However, it might be argued that the inroads that existing ABC affiliates would make on the Grade B contour of a potential UHF applicant makes the economic viability of such a station doubtful, even with an ABC affiliation.

28. It seems unassailable that adverse to the existing prospective UHF stations in Columbia would be the following:

(a) Operation as proposed by the three Charleston commercial VHF stations would increase Grade B overlap with the Columbia UHF stations from about 5% to approximately 25%.
(b) Proposed WUSN-TV would duplicate ABC network reception service affecting 21% of the population in the Grade B coverage area of WOLO-TV, the ABC affiliate in Columbia, an increase from 1%.
(c) Proposed WCSC-TV would duplicate CBS network reception service affecting 25% of the population in the Grade B coverage area of WNOK-TV, the CBS affiliate in Columbia, an increase from 4%.
(d) The Charleston stations operating as proposed would reduce the number of persons now served by WNOK-TV/WOLO-TV but not by stations in other cities from 18,481 persons (3%) to 16,681 persons (2.5%), a difference of 2,300 persons.
(e) The Charleston stations operating as proposed would effect new or additional Grade B penetration of four Columbia ADI counties and one Charleston ADI county in which WNOK-TV/WOLO-TV serve in part: Calhoun County—from less than 10% to 81–85% of population and Grade B service to county seat; Orangeburg County—from approximately 35% to about 85% of population and Grade B service to county seat; Sumter County—from no service to 89–94% of the population and Grade B service to county seat; Lee County—from no service to 33–43% of the population but no service to county seat; Clarendon County (Charleston ADI)—from 42–74% to 100% of population and continued service to county seat.

29. In any fair test of the balancing of the net effects of the two Commission policies under review here, those matters, as illumined by the evidence favorable to a grant of the Charleston applications would also be in point. Among them would be:

(a) The three Charleston commercial VHF stations would almost double their Grade B service areas and populations.
(b) A significant portion of the gain area now receives only two and three Grade B television services.
(c) Because of increase in signal strength, television service in the present service areas would be improved.
(d) A first individual network reception service will be provided to new areas including 130,780 persons for ABC, 3,046 persons for NBC, and 22,132 persons for CBS.
(e) A first three-network service will be provided to new areas including 159,333 persons.
(f) A first noncommercial educational television service would be provided to 22,085 persons.
(g) Operation of four television stations from one tower is in accordance with Commission policy of encouraging use of antenna farms.

B. Economic Information and Data Relating to UHF Impact Issue

30. At present, the Area of Dominant Influence (ADI) of the Columbia, South Carolina, television stations consists of the "metro area," counties of Richland and Lexington (78,200 TV households) and the following additional counties (with the number of TV households shown in parentheses): Sumter (18,100), Orangeburg (16,500), Kershaw (8,700), Fairfield (4,400), Lee (4,200), and Calhoun (2,700). Clarendon County (5,400) had been in the Columbia ADI, but was shifted in 1969 to the Charleston ADI. For years the Columbia market has been dominated by the VHF station, WIS-TV. The revenue distribution in the market for 1969 follows the pattern of the preceding five years: WIS-TV had total revenues of $2,799,751 (or 74.7% of the

market total): WNOK–TV had $661,976 (17.7%),[54] and WOLO–TV had $288,276 (7.7%).

31. Although ARB's ADI concept has tended to minimize the Total Survey Area (TSA) differences among markets, ARB still reports each station's audience in the total area. A comparison of TV homes in the Charleston and Columbia markets shows the following:

	TV homes metro area	TV homes survey area	TV homes outside metro	Percent TV homes outside metro
Charleston	85,600	325,000	239,400	74
Columbia	78,200	618,200	540,000	87

32. Although the Columbia UHF stations, until the recent past, had drawn very little audience outside the metro area (see paragraph of the basic findings, above), the increase in UHF set penetration in the non-metro area to 77%, with prospects of 96% set penetration in due course, coupled with the recent improvement in power undertaken by the UHF stations would enhance the prospects of WNOK–TV and WOLO–TV gaining additional audience in the non-metro portion of the Columbia ADI. It seems probable that the area in which the UHF stations would make their principal gains is in the Columbia ADI counties of Calhoun, Lee, Orangeburg and Sumter and in Clarendon County which has shifted to the Charleston ADI. These are the counties in which the increase in overlap between the Columbia UHF stations and the Charleston stations would occur, assuming the Charleston grant. It is also probable that the four Columbia ADI counties will shift to the Charleston ADI, with a resultant drop in ARB national rank for the Columbia market. This would suggest a drop in national spot revenue in the Columbia market.

33. Additionally, (although seemingly a strange admixture of grammar) a loss can be foreseen of the "potential gain" which could be achieved by the UHF stations in these counties, if the Charleston applications were not granted. On the other hand a grant of the Charleston applications would not mean the loss of all revenues from these counties to WNOK–TV and WOLO–TV. A prediction could be sustained that the Charleston stations would take about half of the "potential" income for WNOK–TV and WOLO–TV from these counties. Although it can be conceded that if the UHF stations had no additional VHF competition during the next two years their audience may continue to grow and their share of viewing hours may increase.

34. The general manager of WCSC–TV predicted that the tall-tower operation could not possibly commence before September 1972, based upon the procedural history of the *Cosmos Broadcasting Corp., infra*, proceeding. Based upon experience, this timetable is not unreasonable.[55] Therefore it has been suggested, WNOK–TV and WOLO–TV

[54] WOLO–TV did not commence operation with increased power until November 1969.
[55] This assumes that the respondents, WIS–TV, WNOK–TV and WOLO–TV, would exhaust their administrative remedies in the event of a grant of the applications.

can count on a "breathing spell" of reasonable magnitude within which to develop viewing audiences in these counties. This prospect, should it occur, seems of little comfort to the respondents should their urgings be factual. It would, in essence, simply be postponing the execution date. The recent improvement in the facilities of WNOK–TV and WOLO–TV make it possible for the first time for viewers in these counties to receive all three networks without reorienting their antennas. Antenna rotors cost $40–60 and relatively few families in the UHF gain area have them. These facts if undisturbed by outside factors could further contribute to the economic health of those stations.

35. Standard Rate and Data Service figures show that the residents of the four above-named counties heavily favor Columbia newspapers over Charleston newspapers (see paragraph 56 of the basic proposed findings above). The counties are not only physically closer to Columbia but economically closer. When they go to a larger city to shop, they tend to go to Columbia—a fact which advertisers wish to encourage and develop. The counties are oriented both culturally and politically far more to Columbia, the state capital, than to Charleston.

36. While neither WNOK–TV nor WOLO–TV urged that the Charleston tall-tower proposal is causing their complete economic destruction or significantly crippling their ability to serve the public, neither could one, under the evidence adduced, suggest either a neutral effect or none at all on their overall commercial viability or the commercially natural quest to have their stockholders realize a higher rate of return on their investment.

37. The Broadcast Bureau in its proposed conclusions observed: "The question presented, namely whether the economic impact on the Columbia UHF stations will be such that it outweighs the public benefits to be derived from a grant of the Charleston applications, is a close one. Future economic impact is not an area subject to positive proof. It must perforce be based to a considerable extent on forecasts and inferences which can be drawn from economic data presently available." The Bureau also concluded: "The record in this proceeding does not establish the prospect of economic injury to the Columbia UHF stations from the Charleston VHF stations of such a magnitude as to require denial of the Charleston applications." The first, that the question "is a close one" is pithy indeed. The latter, when matched with the evidence and juxtaposed to the "impact issue" seems wide of the mark of hardheaded reality. Witness as one of several indicia the concise and indisputable observation of the Bureau: "Admittedly, operation of the Charleston stations from the proposed tall-tower will result in the Charleston stations achieving *some audience in the overlap area, and this audience will be achieved at the expense of the three Columbia stations.*" (Emphasis added). On this fact alone, one must have prudent doubts whether there would be no substantive impairment to their ability to compete effectively, i.e., the U's inter se and face-to-face with the V's on virtually the same ground with the prospect of artificial intruding barriers to maintaining present, if not gaining prospective customers (audience). The Commission has consistently and frequently expressed its concern for fostering the development of both existing

and potential UHF stations. It has also emphasized that this concern must be weighed against its policy of encouraging television stations to operate with maximum facilities in order to make the most efficient use of the channel assignment. When these two basic policies are in conflict a careful analysis of all the facts must be made so that the choice between them honors and serves the overall public interest.

38. Also, and crucial to the "impact issue", the evidence established and, thus, it is concluded that a grant of the Charleston applications would foreclose viable utilization of the Florence UHF channels. WUSN–TV would place a Grade B ABC signal over the city of Florence, thereby eliminating any chance of an ABC UHF affiliation. The existing VHF station in Florence carries CBS programs and NBC is supplied to Florence by WIS–TV, the Columbia VHF station. Florence is a relatively small market hemmed in by television stations in Wilmington, Charlotte and Columbia. The Commission in 1969 cancelled the outstanding construction permit of Rovan of Florence, Inc. because of its failure to construct. Also, Cosmos Cablevision Corp. operates a CATV system in Florence. The signal of WIS–TV covers 60% of the Grade B contour proposed by Rovan and the ABC affiliates in Wilmington, Columbia, Charlotte and Charleston presently cover an aggregate of 44% of the Grade B contour proposed by Rovan.

39. Though it must be admitted that the Commission is not and cannot be the hand-maiden of the economic well-being of any of its licenses, including UHF licensees, conversely, under its prevailing policy to "advance, encourage and foster the full use of the present UHF television band (channels 14–69) by commercial and educational interests" (Docket No. 14229—Report No. 6588, January 28, 1971), neither may one be heard to say that UHF spectrum users are to be rejected as abandoned waifs. Indeed, in its Report and Order, the Commission emphasized "The full use of this valuable asset can with imagination, thought and determination bring our society a fuller and richer variety of educational and entertainment programming which can both serve private and public needs and aspirations to the general advancement of our culture" (Eighth Report and Order, FCC 71–92, Docket No. 14229, released February 1, 1971).

40. With this fresh pronouncement of virtually vintage Commission policy, one might at a glance assess an end to the inquiry under the impact issue at this point even if one conceded that the parameters of adverse impact, in the tall-tower grant, were not great. Since the *Suburban* or Community Problems issue is yet to be addressed, more may be needed to reach that result in light of the various precedential situations illuminative of the subject at hand.

41. *In Cosmos Broadcasting Corporation*, 21 FCC 2d 729–733 (Review Board 1970), it was stated:

> It is definitely not the Commission's policy to insulate every UHF station or potential station from any possible small wind of VHF impact, where there is substantial service benefit involved in a different course, TV Table of Assignments, Docket No. 18453. In the final analysis, where, as here, UHF impact is in issue in a case involving a proposed transmitter move, a choice must be made between the Commission's policy of "encourag[ing] television broadcast stations to operate with maximum facilities in order to make the most efficient use of channel assignments" and the policy of "fostering the development of UHF

broadcasting" *South Carolina Educational Commission*, (WITV [a party applicant here] 18 FCC 2d 328, 331, 16 RR 2d 725, 729, reconsideration denied 20 FCC 2d 666, 17 RR 2d 1077 (1969) . . . Where substantial adverse impact on UHF service has been shown, the choice must be in favor of the Commission's protection policy, *Gala Broadcasting Company* . . . FCC 68-512, 13 RR 2d 103. On the other hand, in a case such as this one, where only minimal impact has been shown, Commission policy does not require us to deny applications to improve the operation of an existing VHF station.

42. To lay a fair test of the conditions found in *Cosmos* and companion cases, e.g., *Central Coast Television*, 14 FCC 2d 1002: *WLCY, Inc.*, 16 FCC 2d 506, with those here, some recognition and consideration, in a case with issues of this kind, must perforce be demonstrated from the record evidence. Without in any way circumscribing the values of the disciplines or specialized experience of the several experts employed on both sides of this case (indeed there is much to be admired in the depth of their knowledge, the metes and bounds of which might well exceed or elude the comprehension of the average layman) because at crucial points, variance and conflicts of opinion occur which tend to blur, if not muddy, a fair understanding of the real facts, more reliance will be placed on those experts, principally engineering, where discipline and expertise are not only time-tested within the history of the Commission but, as a general proposition, are less susceptible to serious challenge or unresolvable dispute. Though, as trier of the facts, all who testify, including the skilled or expert, are to be and will be given their due weight as evidential contributors to the record.

43. There was in *Cosmos* a contest with similar issues, but unlike here the respondents there had both the burden of proceeding with the introduction of the evidence and the burden of proof under the UHF impact issue. Here, the Charleston applicants are burdened preponderantly to show the likelihood that their proposed tall-tower would have less than a significant impact on one, some or all existing or prospective UHF television stations in the area. And, as was stated in Central Coast, supra at p. 1005, "Basic to resolution of the impact issue is the Commission's long-established public policy of encouraging the growth and development of UHF television stations, of fostering 'optimum conditions for the growth of UHF [television] and [of taking] no steps, unless required by other exceptional public interest considerations, which would reduce the demand for UHF service,' *Triangle Publications, Inc.*, (WNHC-TV), supra, 37 FCC 307, 320, 3 RR 2d 37, 53. The effect of that policy on the specific situation here present—a VHF transmitter move—has recently been defined by the Commission, which held that if a conflict arose, as it has in the instant case, 'the paramount policy of fostering UHF service would more than offset the policy of encouraging VHF stations to provide the best possible service to the largest number of persons'. Gala Broadcasting Company, FCC 68-512, 13 RR 2d 103, 105."

44. Although in *Cosmos* the VHF application was granted over the protests of the respondents, it seems fairly certain that that decision was principally based on respondents failure to sustain their evidential burden, not that any new departure from established precedent

or policy in these matters was contemplated (Cf. *Reconsideration Order Mount Vernon Television Report and Order*, 18 RR 2d at 1628.

45. Putting to the side (for the moment) the question of burden of proof, the evidence of record affirmatively suggests the conclusion that there will be a significant and substantial likelihood of a serious threat to effective UHF competition in the Columbia market on grant of the Charleston tall-tower proposal. That real danger arises when it is seen that the grant of the tall-tower inchoately frustrates effective UHF competition in the Columbia market. This threat may take any one of sereval forms: WOLO–TV has been historically a financially marginal station; only recently has it been in a position to undertake technical and programming improvements to enchance both its competitive position and its service to the public; with its substantial indebtedness incurred to finance its improvement of facilities and programs, it must develop additional audience if it is to survive and grow; Charleston operation from the tall-tower will seriously cripple if not destroy this potential for audience development.

46. At the very least WOLO–TV would be relegated to the role of a marginal station, limited to service in the metro area, unable to compete effectively in the Columbia market.

47. As to WNOK–TV, there is much less likelihood that it would be forced to discontinue operation. On the other hand, it, too, has engaged in a substantial building program, believes it must make costly additional improvements as fast as growth in revenues permits in order to be able to compete effectively in its market. In order to break even and provide a more competitive program service in the public interest, it must substantially increase its revenue; and like any other private business, WNOK–TV cannot operate indefinitely without being able to provide its owners with a reasonable return on their investment. Charleston operation from the tall-tower will seriously cripple if not totally destroy WNOK–TV's most realistic potential for audience development, thus limiting WNOK–TV's operation to that of a marginal operator, unable to compete effectively in the market.

48. In the event of normal UHF development, the Columbia market offers an attractive potential for new entry by an independent UHF station. The grant of the tall-tower would drastically reduce the attractiveness for new entry by any responsible investor.

49. These conclusions can be reached without regard to the question of burden of proof. If superimposed on these lines of inquiry is the requirement that the Charleston applicants bear the burden to disprove these compelling conclusions, there can be little doubt who should prevail.

50. Further conclusions touching on the overall question of impact are: both WOLO–TV and WNOK–TV have recently improved their operating facilities. At present they provide Grade B service to practically the entire Columbia ADI consisting of eight counties. Both stations have in the past had an extremely difficult time developing their audience in competition with WIS–TV. Particularly has this been true in the case of WOLO–TV. In order to become more competitive and provide better service, each has improved facilities but in the process has incurred substantial capital indebtedness and greatly increased operating costs.

51. The indebtedness, the increased costs attributable to the improvements, and normal increases in operating expenses that would occur, in any event, have to be met with increased revenues, which principally means increased audience. WOLO–TV has estimated that it will have to develop some 8,000 to 9,000 new prime-time homes outside of the metro area if it is to reach its objective of better programming service and survival. Thus, WOLO–TV, even without any additional Charleston service, faces a difficult challenge.

52. The record shows that there is very little potential for developing audience outside of the ADI, except in Clarendon County and possibly Newberry County. Within the ADI the largest area for potential UHF development by either WNOK or WOLO includes the four counties of Sumter, Orangeburg, Calhoun, and Lee. These four counties, plus Clarendon, provide approximately 31,000 UHF homes. The most recently available data, which largely antedates the WNOK–TV or WOLO–TV improvements, show no significant UHF share of the audience in these counties. Thus, they offer excellent growth potential. Their potential is enhanced by the fact that the counties to a large extent are oriented towards the Columbia market, both economically and culturally. Also, WIS–TV operating on Channel 10 has substantial viewing audience in these counties and thus affords a Columbia umbrella over the counties under which the UHF stations can develop.

53. WNOK–TV needs an increase in revenue of approximately $100,000 over 1969 revenues simply to break even and cover its amortization costs on new equipment. Additional revenue is needed to show a reasonable return on investment which in turn will justify further investment for improvements in facilities and programming service. WNOK–TV is currently reaching only about 3,700 homes outside of the "metro" counties, so again the five key counties offer a substantial potential for the development of the UHF audience.

54. What, then, will be the impact of the Charleston tall-tower operation on this critical need for audience growth? The engineering evidence establishes that there will be a significant penetration into the Columbia UHF service areas and that the penetration is particularly substantial in the five key counties. Whereas there are now only 45,000 in the five counties, from the tall-tower there will be approximately 175,000 persons.

55. The Charleston stations, it seems fair to state, seek improving their facilities in order to gain audience, an otherwise perfectly proper objective. In this respect it is significant that the five key counties contain close to 35 percent of the TV homes in the 19 counties in which the Charleston stations will pick up their major audience gains. Thus, these five counties represent a very important potential for Charleston.

56. An analysis of the strength in the county seats of these critical counties also is revealing. This shows that at the present with the exception of Clarendon County, the Columbia UHF stations enjoy a substantial signal advantage over the Charleston stations. From the tall-tower operation, the Charleston stations' signals will substantially exceed the Columbia UHF signal in Clarendon and would become approximately equal to the signal strength of the Columbia stations in the two major counties of Orangeburg and Sumter. The Columbia

signal strength advantage in Lee and Calhoun would be considerably diminished.

57. Added to these considerations are the well-known UHF handicaps. No purpose is served by detailing the difficulties which UHF stations face operating against VHF stations. For the first time in these five counties, Charleston would be able to provide roughly comparable service and offer three full network services from a single tower.

58. The principal area within which the Columbia UHF stations could hope to realize their needed increase in audience appear to be in the Columbia ADI, plus Clarendon County. Specifically, while there is potential for improvement in the two metro counties, the major potential lay in the counties outside of the metro but still within the ADI.

59. Of the six non-metro counties, four may be considered "key" counties (plus Clarendon). These counties can be selected as "key" counties because they are within the Columbia ADI and the preponderance of viewers in those counties are considered as viewing Columbia. There are some 46,000 homes in these counties with little current UHF viewership, and these are the counties into which the Charleston tall-tower will penetrate.

60. The potential value which these counties possess for the two UHF stations amounts conceivably to a not inconsiderable revenue increase to both WOLO–TV and WNOK–TV. An even greater potential can be seen as UHF set penetration increases or as the UHF ratings increased. Thus, as revenues increase, the two UHF stations would be in a position to enhance programming service to the public, thereby serving their own self interest as well as providing more effective competition in Columbia. The tall-tower would all but cancel the ability of the UHF stations to obtain this objective.

61. The spectre of the possibility of a drop in market ADI rank due to a shift of one or more counties could cause a consequent drop in national spot dollars flowing into the Columbia market. That there is a direct correlation between the rank of a market in number of ADI homes and the rank of a market in total national spot dollars is not altogether an undisputed fact among the "experts". There is reason, nevertheless, to prudently speculate that the lower the rank in ADI homes, the lesser the amount of national spot dollars. Thus, if all five counties were assigned to other ADI markets, the loss of national advertising dollars to Columbia could be considerable.

62. The potential loss in national dollars represented by these five counties is a matter of no mean significance. The Charleston stations have affirmatively urged that it is highly unlikely that all five counties would shift immediately from the Columbia ADI simply because of the operation from the tall-tower. Obviously conditions vary in the five counties, and all are not equally exposed to this threat and since the subject matter here lends itself more to prediction of the probable than to hard reality, it is not unreasonable to assume, under the evidence of record, the darker of the prediction.

63. Under ARB–ADI definitions the issue is whether a preponderance of the viewers would shift away from the Columbia stations to

some other market's stations. Clarendon viewers have already done this. There is also substantial risk that Orangeburg, with 16,500 homes, will be lost. There is also a substantial, albeit a lesser risk that Sumter County, with 18,100 homes, would in time shift out of the Columbia ADI. The proposed Grade B coverage of Sumter exceeds the present coverage of both Clarendon and Orangeburg counties which have already shifted or are close to shifting. There is much less of a threat in the case of Calhoun and Lee counties, but together these counties have only 7,100 TV homes and, so, are far less important than either Orangeburg or Sumter.

64. Even if not all counties are lost to the Columbia ADI, there is a reasonable prospect that at least one or more will be lost with a consequent and considerable drop in national spot dollars. Charleston's evidence, therefore, although not without merit, accordingly goes more to the question of how much revenue will be lost rather than whether there will be any loss at all. To the extent that the UHF stations now share approximately 9 percent of this revenue and hope to do better, they would be directly and adversely affected in their pursuit of essential additional revenue.

65. The Columbia market is a very profitable market and if the two UHF stations are able to develop into effective competitors the total amount of dollars generated in the market would provide an attractive opportunity for another new station. By the same token, the intrusion of three VHF signals from Charleston into these "key" counties would pretty much destroy the potential for new entry. If, as appears a realistic prospect with the advent of the tall-tower operation, the two existing UHF stations in Columbia must retrench and operate marginally in the metro area only, it is reasonable to conclude that no responsible investor would seriously consider applying for the available UHF channel in Columbia.

UHF Impact in the Florence Market

66. There seems little doubt and the record convincingly establishes that there is in the Florence ADI market some 73,200 TV homes. Indeed, the Broadcast Bureau suports the view that "a grant of the Charleston applications would foreclose viable utilization of Florence UHF channels." At the present time this market has been carved out by Station WBTW operating on Channel 13 and offering a CBS network service to the market. WBTW has been a profitable station. NBC service is available to the market from the neighboring station WIS–TV in Columbia and from WECT–TV in Wilmington.

67. However, there is no significant amount of ABC Grade B service in the Florence ADI; nor, according to ARB statistics for the Florence ADI, is there any significant share of viewing of ABC stations (9.5%). Thus, it seems fair to conclude that Florence offers a potential for a second station either on Channel 15 or 21 in the event that station could obtain an ABC affiliation.

68. Both opposing economic experts or consultants have expressed opinions that Florence offers a promising potential. In a Report given in August of 1968 in the form of an objective appraisal of

market potential, the consultant who testified for the Charleston applicants, at one time expressed such a view regarding the viability of the Florence market. In a detailed Economic Feasibility Report prepared for Rovan of Florence, Inc., a former holder of a construction permit for Channel 15 in Florence, he concluded that the UHF channel offered a sound and reasonable investment prospect, which within a few years could be worth at least $2,000,000. He no longer holds this view.

69. As further support for the opinions of these two experts, there is the fact that Rovan of Florence, Inc., did apply for and held a UHF construction permit to operate on Channel 15 from 1965 until August, 1969, at which point in time the Commission refused to extend the time for Rovan to construct. Concededly, obtaining and holding a permit is not absolute proof that construction would be completed. But it is some evidence of a *bona fide* interest in the market and some evidence as to that market's potential attractiveness.

70. Rovan of Florence, Inc., was the original petitioner in this proceeding. It sought to obtain a denial of the Charleston tall-tower applications for the reason that it feared a grant of the tall tower would make impossible its efforts to obtain an ABC network affiliation for Florence. Even its reasons for seeking additional time to construct were tied into this theme; namely, its belief that it should be allowed to await the outcome of this case before being forced to move ahead. Rovan stated under oath that it would be unable to secure a network affiliation and compete effectively in the market if the Charleston tall-tower were granted.

71. The Commission held that Rovan's failure to construct was attributable to its own assessment of the competitive situation and not due to "circumstances beyond its control." That policy question is not in issue here.

72. According to the Charleston applicants, one of the main service gains will be the providing of Grade B ABC service to this ABC "white area" in and around the Florence market. From their point of view, they will be serving a public need. But that very dearth of ABC service can also be filled by a local UHF ABC affiliate in the Florence market. This is what Station WPDT proposed to do. If there is this need for ABC service, this would support the conclusion that there is potential for yet another applicant such as Rovan.

73. The question then arises: What would happen to this potential if the three Charleston stations operate from the tall-tower. The evidence shows that all three stations would provide Grade B service to approximately 40 percent of a Florence UHF station's Grade B contour and that the Charleston Grade B contours would extend beyond Florence. In the two key counties of Florence and Marion (where there are over 30,000 TV homes out of 73,000), there is currently no Grade B Charleston service; from the tall-tower, service would be provided to approximately 95 percent of Florence County and 75 percent of Marion County. The market already receives primarily VHF service from WBTW and WIS-TV in Columbia. The intrusion of *three additional VHF signals* into this market would

make highly unlikely any realistic prospect for successful UHF development in Florence and certainly would kill any chance for an ABC affiliation.

74. It is fair to conclude that despite present doubts of the Charleston consultant there is established on the record some potential for UHF development in Florence. That potential is considerably more than minimal. By whatever standard one measures that potential, it would be virtually destroyed were the three Charleston stations permitted to operate from the tall-tower.

75. By way of summary, to crystallize the foregoing and, to repeat for emphasis sake, the principal proposition presented for test, analysis and determination is premised on the evidence adduced, whether a grant here "would impair the ability of authorized and prospective UHF television broadcast stations in the area to compete effectively, or would jeopardize, in whole or in part, the continuation of existing UHF television service" (Designation Order FCC 69–666 released June 26, 1969). That test and determination must, of necessity, take place within the crucible of two well established and yet prevailing Commission policies. The one which favors encouraging television broadcast stations to operate with maximum facilities in order to make the most efficient use of channel assignments; the other, the often expressed concern of the Commission, the fostering of the development of UHF broadcasting. In this case, not unlike a seeming growing number of others, these two policies appear on collision course.

76. As noted earlier, the burden of proceeding with the introduction of evidence with respect to the UHF impact issue was placed on the parties respondent while the burden of proof was correspondingly given to the parties applicant. Thus, assuming an evidential threshold showing, *prima facie*, of the elements subsumed with the "impact" issue on the part of the parties respondent, then it is incumbent upon the parties applicant, from the evidence of record, to demonstrate preponderantly that the postulates within that issue are, in a word, more fanciful than real.

77. The proponements of the grant of the applications have not sustained that burden. The Community Problems or *Suburban* issue is, however, resolved in their favor, all pertinent policy and precedent, under the evidence having been met and satisfied. In a word, the effective elimination of further prospects for UHF development at Florence, South Carolina, upon favorable grant of the Charleston proposal, does more than minimal violence to the affirmative policy of protecting and encouraging the development of UHF broadcasting in that area, which area would be substantially affected by and comprehended within the tall-tower proposal. Added to this crowning effect would be the major incursions in the Grade B areas of the Columbia stations from that of 5% to approximately 25% by the applicants' tall-tower. This would not only affect some duplication of networks service in the affected area but more importantly if the Columbia UHF stations are to improve their commercial viability by becoming more commercially attractive to broadcast advertisers, be they local, national spot or networks, they will also have to attract viewers, new viewers and the best prospects for that condition would be in the key

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counties alluded to earlier and not be satisfied by the unnatural stricture of the audience potential in the present metro areas. Excellence of programming, if one should suggest a cure, alone—a difficult task for UHF operators, in any event—would not wash away the ill-effects on competitive actual and potential of the UHF operators here and prospective by the major presence of these established commercial Charleston VHF's in the same area.

78. Though no one can be heard to stretch or distort the UHF protection policy of the Commission to that of a hand-maiden to, or guardian angel of commercial success to UHF broadcasters, on the other hand, that policy whatever its bounds, is hardly equivalent, to indulge a canard, a sink or swim one. The residual effects of a favorable grant here, more than amounting to a "small wind" to the daily tasks of the UHF operators, would be the occasion of a violent storm, likely, more than poetically, of hurricance force. Rather than encouraging and fostering the development of UHF in the area of concern, the tall-tower proposal discourages and is a deterrence, in a substantial way, to that end. That being the persuasion, from the evidence adduced, the conclusion is compelling.

79. A further word is appropriate here. Whatever the dimensions of the opportunity placed before the educational TV applicant, South Carolina Educational Commission (SCETV), (WITV), in being associated with three commercial applicants in the tall-tower proposal, nothing here is, nor can be, intended to definitively eliminate or prejudice its plans or goals. This, notwithstanding the failure by this decision to realize a first non-commercial television Grade B service to some 22,085 persons. SCETV is a broadly based state-wide system presently comprising five television stations (including WITV) as well as closed-circuit operations receiving some 250 secondary schools in the state with the principal television production center at Columbia. Indeed, a recent authorization is held by WITV for a 316 kilowatts ERP at 850 above average terraine facility. This is a considerable improvement on its current 28.8 kilowatt ERP 220 feet facility. In sum, while the betterment of educational television is of special concern to all, nothing here will impose any inordinate impediment to that concern.

Accordingly, premised on the foregoing [56] and the public interest so requiring, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by a party or the Commission reviews the Initial Decision on its own motion under Section 1.276 of the Rules, the instant commercial applications for a construction permit to operate from a common 2000' tower BE AND ARE HEREBY DENIED; and IT IS FURTHER ORDERED, solely to the extent that South Carolina Educational Television Commission (WITV) application is contingent upon the grant of the aforesaid applications, that its application BE AND IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
JAMES F. TIERNEY, *Hearing Examiner.*

[56] Appendices are intended for convenience. In any event, they are incorporated and are an integral part hereof.

APPENDIX I

Glossary

ADI (Area of Dominant Influence)—An American Research Bureau concept consisting of all counties within the total survey area of a television market in which the viewing hours are dominated by the stations in that market. Each county in the nation is assigned to only one ADI.

Metro Area—A television market concept consisting of standard metropolitan statistical area (SMSA), as defined by the Bureau of the Budget, with limited modifications made for the specifics of the local television situation.

Metro Rating—The percentage of households in the metropolitan area viewing a specific station during a specific time period.

Total Survey Area (TSA)—The counties surrounding a market in which is located at least 98% of that market's home stations' net weekly circulation. A county can appear in more than one survey area.

Net Weekly Circulation—The number of homes viewing a station for at least 5 minutes in a seven day period.

Television Market Analysis (TMA)—An American Research Bureau publication compiled annually which contains various types of audience distribution and financial information pertaining to the television markets of the United States. The most recent TMA, that for 1969, was published in the early Fall of 1969 (after receipt of FCC 1968 financial information) and contained audience information for 206 United States television markets and financial information for 121 [1] of the 206 markets.

ARB Local Market Reports—A compilation published several times a year of average quarter-hour audiences delivered by each station in a particular ARB market during a four week measuring period. In the case of the November, 1969 market reports for Charleston and Columbia, South Carolina, the four week measuring period commenced on October 29, 1969 and terminated on November 25, 1969.

ARB County Viewing Share Studies—ARB Reports published every two years for each state which give a county-by-county analysis of the shares of viewing hours accounted for by all television stations which have a measurable audience in a particular county. The measuring period consists of several local market report measuring periods. In the case of "Coverage 69, South Carolina County Report", the measuring periods consisted of October-November, 1968 and January, February, March and May, 1969.

APPENDIX II

Biographical Information Regarding the Witnesses Who Testified Concerning the "UHF Impact" Issue

A. WITNESSES OF OBJECTORS WHO TESTIFIED ON DIRECT

1. *Robert E. L. Kennedy:* Mr. Kennedy is a Registered Professional Engineer in the District of Columbia; a member of the consulting engineering firm of Kear and Kennedy.

2. *Martin H. Seiden:* Dr. Seiden is President of M. H. Seiden, Inc., an economic consulting firm. He received a B.A. degree in Economics from the City College of New York, an M.A. degree in Economics from Columbia University and a PH.D. degree in Economics from Columbia University.

3. *H. Moody McElveen, Jr.:* Mr. McElveen is Executive Vice President and General Manager of Palmetto Radio Corporation, licensee of WNOK AM-FM-TV, Columbia, South Carolina.

4. *Taliaferro Simpson:* Mr. Simpson is Assistant Vice President for Operations of the Cy N. Bahakel stations WCCB-TV, Charlotte, North Carolina; WKAB-TV, Montgomery, Alabama; WCBG AM-TV, Greenwood, Mississippi; WBBJ-TV, Jackson, Tennessee; WWOD AM-FM, Lynchburg, Virginia; KXEL AM-FM, Waterloo, Iowa; WKIN, Kingsport, Tennessee; WDOD AM-FM, Chattanooga, Tennessee; and WOLO-TV, Columbia, South Carolina.

[1] The first 72, ranked by TV homes, and the balance from markets ranked 74-160 by TV homes.

B. WITNESSES OF APPLICANTS WHO TESTIFIED ON DIRECT

1. *Oscar Reed, Jr.:* Mr. Reed is a Registered Professional Engineer in the District of Columbia and is employed by the Jansky & Bailey Broadcasting Television Department of Atlantic Research Corporation, a Division of the Susquehanna Corporation, Alexandria, Virginia.

2. *Lowell R. Wright, Jr.:* Mr. Wright is a practicing Aeronautical Consultant, having established a consulting business in 1953. He was employed prior thereto by the Civil Aeronautics Administration, predecessor to the Federal Aviation Administration, for 16 years.

3. *Richard P. Doherty:* Mr. Doherty is a Consultant in the field of Broadcast Economics and Broadcast Station Management Operations. He received an AB degree in Economics from Clark University and a Masters degree in Economics from Brown University.

4. *William M. Nugent:* Mr. Nugent is Group Research Manager of Edward Petry & Company, Inc., national sales representatives for television and radio stations.

5. *John M. Rivers:* Mr. Rivers received an AB degree from the University of Pennsylvania and was employed by the South Carolina National Bank from 1924 until 1935 when he resigned as Assistant Vice President in Charge of Investments and entered the stock and bond brokerage business. He is presently General Manager and principal stockholder of WCSC, Inc., the licensee of WCSC AM-FM-TV, Charleston, South Carolina, having served as President since 1938.

6. *Henry J. Cauthen:* Mr. Cauthen is General Manager of the South Carolina Educational Television Commission, the licensee of educational station WITV, and has served as Chief Executive Officer for the Commission since 1965.

C. WITNESSES OF OBJECTORS WHO TESTIFIED ON REBUTTAL

1. *Martin H. Seiden:* See above.

2. *Richard T. Laughridge:* Mr. Laughridge has been with WNOK-TV since 1953 and has been Vice President for Sales since 1968.

3. *Robert J. Kizer:* Mr. Kizer is Administrative Vice President and Director of Television Sales for Avery-Knodel, Inc., national sales representatives for television and radio stations.

APPENDIX III

Since 1949, various television stations have commenced operation in South Carolina and adjoining states and their facilities have been improved from time to time. These changes are directly related to the question of UHF impact which is at issue in this case. In order to conveniently follow the continuing changes that have been made relative to television allocations in this part of the United States, the facilities and dates of commencement of operation of those stations that are pertinent and relevant to this proceeding are tabulated below.

PERTINENT ASSIGNMENTS AND FACILITIES[1]

(Applicants' Ex. 2, Table 1, pp. 1-6; Ex. 22, pp. 1-10; Tr. 1091)

Community	Station	Channel	Operation commenced	Facility
Charleston, S.C.	WUSN-TV	2	9-6-54	100 kW, 780 ft.
		2		Req: 100 kW, 1860 ft.
	WCIV	4	10-28-62	100 kW, 790 ft.
		4	5-22-67	100 kW, 940 ft.
		4		Req: 100 kW, 1950 ft.
	WCSC-TV	5	6-19-53	100 kW, 470 ft.
		5	3-7-59	100 kW, 1000 ft.
		5		Req: 100 kW, 1950 ft.
	WITV	*7	1-19-64	28.8 kW, 220 ft.
		*7	CP: 2-18-70	70.8 kW, 850 ft. DA. 144 kW, Hor. Max.
		*7	MCP: 4-23-70[2]	132 kW, 850 ft. DA. 316 kW, Hor. Max.
		*7		Req: 240 kW, 1720 ft. Hor. 316 kW, 1720 ft. Max.

Footnotes at end of table.

Community	Station	Channel	Operation commenced	Facility
Columbia, S.C.	WIS-TV	10	11-7-53	269 kW, 640 ft.
		10	11-2-64	316 kW, 1550 ft.
	WNOK-TV	67	9-1-53	74.1 kW, 630 ft.
		19	6-12-61	214 kW, 640 ft. Hor. 245 kW, 640 ft. Max.
		19	7-16-68	1,046 kW, 640 ft. Hor. 1,250 kW, 640 ft. Max.
	WOLO-TV	25	9-29-61	191 kW, 440 ft. Hor. 195 kW, 440 ft. Max.
		25	8-4-64	174 kW, 610 ft. Hor. 178 kW, 610 ft. Max.
		25	Nov. 1969	871 kW, 620 ft. Hor. 1,205 kW, 620 ft. Max.
	WRLK-TV	*35	9-1-66	513 kW, 1,030 ft. Hor. 617 kW, 1,030 ft. Max.
		57		Unassigned.
Florence, S.C.	WBTW	8	10-18-54	316 kW, 790 ft.
		13	10-1-62	316 kW, 790 ft.
		13		Req.: 291 kW, 1,960 ft.
	(WPDT)	15	CP Canceled, 7-15-69.	141 kW, 910 ft.
	WJPM-TV	*33	9-28-67	537 kW, 790 ft. Hor. 646 kW, 790 ft. Max.
		21		Unassigned.
Wilmington, S.C.	WWAY-TV	3	10-30-64	100 kW, 1,170 ft.
	WECT	6	4-12-54	53.7 kW, 360 ft.
		6	2-7-69	83.2 kW, 1,940 ft.
		6	5-5-69	100 kW, 1,940 ft.
	WUNJ-TV	*39	CP	525 kW, 930 ft. Hor. 646 kW, 930 ft. Max.
		29		Unassigned.
Augusta, Ga.	WJBF	6		(2)
		6	CP: 2-1-54	100 kW, 610 ft.
		6	1-6-58	100 kW, 1,370 ft.
	WRDW-TV	12	2-14-54	100 kW, 650 ft.
			7-23-63	295 kW, 1,590 ft.
	WATU-TV	26	12-24-68	340 kW, 1,580 ft. Hor. 800 kW, 1,580 ft. Max.
		54		Unassigned.
Savannah, Ga.	WSAV-TV	3	2-1-56	32.7 kW, 370 ft.
		3	9-18-60	100 kW, 480 ft.
	WVAN-TV	*9	9-16-63	316 kW, 1,050 ft.
	WTOC-TV	11	2-14-54	207.5 kW, 480 ft.
		11	9-27-60	316 kW, 480 ft.
	WJCL	22	MCP: 10-23-69	537 kW, 1,430 ft. Hor. DA. 1,910 kW, 1,430 ft. Max.
Greenville-Spartanburg, S.C.-Asheville, N.C.				
Greenville	WFBC-TV	4	12-21-53	100 kW, 1,140 ft.
		4	1-10-58	100 kW, 2,000 ft.
Spartanburg	WSPA-TV	7	1-28-54	316 kW, 450 ft.
		7	11-18-63	294.4 kW, 2,000 ft.
Asheville	WLOS-TV	13	9-18-54	170 kW, 2,850 ft.
		13	2-21-62	121 kW, 2,830 ft.
		16		Unassigned.
		21		Unassigned.
		49		Unassigned.
Greenville	WNTV	*29	9-25-63	240 kW, 1,140 ft.
		*29	1-23-67	347 kW, 1,140 ft.
Asheville	WUNF-TV	*33	8-31-67	3.68 kW, 2,620 ft. DA.
Asheville	WANC-TV	62	7-5-63	24.1 kW, 420 ft.

Footnotes at end of table.

Community	Station	Channel	Operation commenced	Facility
Charlotte, N.C.	WBTV	3	7-15-49	16.3 kW, 1,070 ft.
	WSOC-TV	9	4-25-57	316 kW, 1,190 ft.
	WCCB-TV	18	12-31-53	589 kW, 1,130 ft.
		18	8-20-69	518 kW, 1,290 ft. Hor. 5,000 kW, 1,290 ft. Max.
	WCTU-TV	36	7-9-67	575 kW, 1,350 ft. Hor. 1,260 kW, 1,350 ft. Max.
	WTVI	*42	8-26-65	214 kW, 450 ft.
Allendale, S.C.	WEBA	*14		557 kW, 800 ft. Hor. 661 kW, 800 ft. Max.

*Educational.

[1] Where there was a variance in the exhibits from licensed values, the figures have been rounded off or completed to indicate license values.

[2] On Aug. 4, 1970 WITV was granted a modification of CP (BMPET-678) to operate with 129 kW, 890 ft., DA (309 kW, Hor. Max.) in lieu of 132 kW, 850 ft., DA (316 kW, Hor. Max.). Change in contour locations is decisionally insignificant.

[3] License files show Station WJBF was granted a CP for 23.4 kW, 610 ft. on 9-16-53. It was granted an STA for transmitter power output of 0.5 kW in lieu of 5 kW and temporary 70 ft. rooftop antenna on 9-18-53. It was granted a CP for 100 kW, 610 ft. on 2-1-54, Program Test Authority for same on 7-8-54 and license for same on 10-1-54.

Additional data concerning CATV Systems

As corollaries to briadcasting service in South Carolina, the Charleston applicants submitted evidence relative to CATV operations owned by Cosmos Cablevision Corp. and TV Cable Co., Inc. The communities, ownership and locations with respect to various Grade B contours are as follows:

Community	Ownership	Grade B Contour [4]
North Augusta, S.C. (franchise)	Cosmos Cablevision Corp.	Just outside WIS-TV.
Charlotte, N.C.	do	Do.
Shaw Airforce Base, Sumter County, S.C. (franchise).	do	Inside recent past WNOK-TV and WOLO-TV; also inside present WIS-TV, WNOK-TV and WOLO-TV, and proposed WCIV.
Sumter, S.C.	do	Just outside recent past WNOK-TV and WOLO-TV; inside present WIS-TV, WNOK-TV and WOLO-TV, and proposed WCIV.
Darlington, S.C.	do	Just outside proposed WCIV; inside WIS-TV.
Florence, S.C.	do	Inside WIS-TV and proposed WCIV.
Marion, S.C.	do	Just outside WIS-TV; inside proposed WCIV.
Conway	TV Cable Co., Inc.	Inside proposed WCIV.
Myrtle Beach, S.C.	do	Do.
Georgetown, S.C. (franchise)	do	Inside present and proposed WCIV.

[4] The network affiliations are: WIS-TV and WCIV-NBC; WNOK-TV-CBS; WOLO-TV-ABC.

Cosmos Cablevision Corp. is a wholly owned subsidiary of Cosmos Broadcasting Corporation. The latter also owns and operates VHF Station WIS-TV in Columbia, S.C. Mr. G. Richard Shafto is a director of Cosmos Broadcasting Corporation but is no longer in active management. He owns 33⅓% of TV Cable Co., Inc. and his wife, Treva Shafto, owns 22¼% of TV Cable Co., Inc. (Tr. 461–466; Applicants' Ex. 2, Fig. 6A, p. 4; Ex. 20, p. 4; Television Factbook, Services Volume, 1969–1970 Edition, pp. 495–a, 545–a, 546–a, 602a).

The overlap and penetration of UHF services of the stations in the individual markets of Columbia and Charlotte are the result of the improvements sought by a single management, Mr. C. N. Bahakel, who owns 100% of Station WCCB–TV and votes 100% of the stock of Station WOLO–TV according to data obtained from TV Factbook 1969–70 (Pages 537–b and 677–b) (Applicants' Ex. 22, p. 4, footnote).

SIGNAL GRADES/FIELD STRENGTHS

Station	Ch	Manning, Clarendon Co.		St. Mathews, Calhoun Co.		Sumter, Sumter Co.		Bishopville, Lee Co.		Orangeburg, Orangeburg Co.	
		dbu	Grade	dbu	Grade	dbu	Grade	dbu	Grade	dbu	Grade
WNOK-TV	19	64.8	B	79.8	A	72.8	B	68.9	B	72.3	B
WOLO-TV	25	65.2	B	79.1	A	73.8	B	69.1	B	72.1	B
WIS-TV	10	79.5	PCG	87.0	PCG	89.4	PCG	87.5	PCG	78.2	PCG
WUSN-TV	2	47.5	B	38.8	(*)	36.8	(*)	26.3	(*)	42.3	(*)
WUSN-TV (prop)	2	63.8	B	51.5	B	53.5	B	44.0	(*)	52.0	B
WCSC-TV	5	49.5	B	41.0	(*)	38.5	(*)	28.0	(*)	43.8	(*)
WCSC-TV (prop)	5	64.5	B	52.2	B	54.0	B	44.9	(*)	52.8	B
WCIV	4	49.5	B	39.5	(*)	37.5	(*)	27.8	(*)	42.5	(*)
WCIV (prop)	4	64.0	B	52.5	B	54.3	B	45.6	(*)	52.5	B
WRDW		.....	(*)	.....	(**)	.....	(*)	.....	(*)	.....	(**)
WJBF		.....	(*)	.....	(**)	.....	(*)	.....	(*)	.....	(**)
WBTW		.....	(**)	.....	(*)	.....	(**)	.....	PCG	.....	(*)
WATU-TV	26	.....	(*)	.....	(**)	.....	(*)	.....	(*)	.....	(**)

*Less than Grade B.
**At least Grade B.
‡ Low band VHF—Grade A=68 dbu; Grade B=47 dbu; PCG=74 dbu. High band VHF—Grade A=71 dbu; Grade B=56 dbu; PCG=77 dbu. UHF—Grade A=74 dbu; Grade B=64 dbu; PCG=80 dbu.

GRADE B COUNTY AREA COVERAGE

[In percent]

Station	Ch.	Clarendon	Calhoun	Sumter	Lee	Orangeburg
WNOK-TV	19	45	100	90	90	80
WOLO-TV	25	40	100	90	90	80
WIS-TV	10	100	100	100	100	100
WUSN-TV	2	48	5	.....	.....	40
WUSN-TV (prop.)	2	100	68	85	43	72
WCSC-TV	5	65	10	.....	.....	45
WCSC-TV (prop.)	5	100	75	90	50	75
WCIV	4	65	8	.....	.....	45
WCIV (prop.)	4	100	75	90	50	75
WRDW	12	.....	85	.....	.....	75
WJBF	6	.....	95	.....	.....	80
WBTW	13	70	.....	90	100	.....
WATU-TV	26	.....	50	.....	.....	60

AREA AND POPULATION STATISTICS, WNOK-TV AND WOLO-TV

County ADI assigned market	Total county		WNOK-TV (1968)		WOLO-TV (1969)	
	Population	Area (sq. mi.)	Area gain (percent)	Population gain	Area gain (percent)	Population gain
1. Richland-Columbia Metro ADI	200,102	748	0	0	0	0
2. Lexington-Columbia Metro ADI	60,726	708	0	0	0	0
3. Kershaw-Columbia ADI	33,585	786	28	4,348	28	4,634
4. Fairfield-Columbia ADI	20,713	699	4	136	10	409
5. Orangeburg-Columbia ADI	68,559	1,105	40	15,254	50	20,662
6. Clarendon-Charleston ADI	29,490	598	42	14,410	36	8,004
7. Calhoun-Columbia ADI	12,256	377	2	131	8	1,046
8. Sumter-Columbia	74,941	665	40	7,698	40	9,080
9. Lee-Columbia ADI	21,832	409	55	13,562	55	12,162
10. Lancaster-Charlotte ADI	39,352	504	40	26,394	40	27,128
11. Chester—G-S-A* ADI	30,888	585	55	16,759	53	18,095
12. Newberry—G-S-A* ADI	29,416	636	45	7,687	45	17,863
13. Saluda-Augusta ADI	14,554	442	50	7,481	50	9,927
14. Edgefield-Augusta ADI	15,735	481	20	5,326	10	3,999
15. Aiken-Augusta ADI	81,038	1,097	30	8,317	30	4,495
16. Bamberg-Augusta ADI	16,274	395	30	9,449	20	1,647
17. Barnwell-Augusta ADI	17,659	553	25	7,907	15	2,312
18. Chesterfield-Florence ADI	33,717	793	2	107	3	123
19. Union, S.C.—G-S-A* ADI	30,015	515	25	1,966	15	1,706
20. Laurens—G-S-A* ADI	47,609	701	2	340	0	0
21. Darlington-Florence ADI	52,928	545	3	815	3	525
22. Greenwood	44,346	447	1	28	0	0

*Greenville-Spartanburg-Asheville.

TABLE A (POPULATION)

County and ADI [6] assigned market	County population	New Grade B coverage (gain)					
		WUSN-TV	Percent	WCIV	Percent	WCSC-TV	Percent
Florence-Florence ADI	84,438	80,006	95	81,421	97	81,421	97
Marion-Florence ADI	32,014	17,469	54	23,192	72	23,192	72
Horry-Wilmington ADI	68,247	55,653	82	59,529	87	59,529	87
Jasper-Savannah ADI	12,237	3,580	29	3,747	31	3,432	28
Beaufort-Savannah ADI	44,187	417	1	556	1	278	1
Hampton-Charleston ADI	17,425	6,724	39	7,053	41	6,971	40
Annendale-Augusta ADI	11,362	162	1	324	3	324	3
Bamberg-Augusta ADI	16,274	8,114	50	8,537	53	8,255	51
Darlington-Florence ADI	52,928	5,324	10	6,615	12	6,615	12
Dillon	30,584	----------	----------	28	----------	28	----------
Charleston	216,382	(*)	(*)	(*)	(*)	(*)	(*)
Berkeley	38,196	(*)	(*)	(*)	(*)	(*)	(*)
Dorchester	24,383	(*)	(*)	(*)	(*)	(*)	(*)
Georgetown	34,798	9,544	27	5,957	17	4,288	12
Williamsburg	40,932	15,789	39	6,880	17	4,440	11
Clarendon-Charleston ADI	29,490	17,227	58	9,369	32	7,578	26
Colleton	27,816	1,056	4	691	2	393	1
Orangeburg-Columbia ADI	68,559	35,955	52	34,728	51	33,584	49
Calhoun-Columbia ADI	12,256	9,332	80	9,362	80	9,339	76
Sumter-Columbia ADI	74,941	66,767	90	70,261	94	70,261	94
Lee-Columbia ADI	21,832	7,150	33	9,446	43	9,446	43
Richland-Columbia Metro ADI	200,102	3,366	2	3,978	2	3,978	2

[6] Area of Dominant Influence, defined by the American Research Bureau as "an exclusive geographic area consisting of all counties in which the home-market stations receive a preponderance of total viewing hours."

*Entirely within present Grade B.

TABLE B (AREA)

County and ADI assigned market	County area (sq. mi.)	Proportionate Grade B Coverage in Percent [7]					
		WUSN-TV		WCIV		WCSC-TV	
		Present	Gain	Present	Gain	Present	Gain
Florence-Florence ADI	805	----------	95	----------	97	----------	97
Marion-Florence ADI	480	----------	70	----------	75	----------	75
Horry-Wilmington ADI	1,152	----------	85	----------	92	----------	92
Jasper-Savannah ADI	662	20	8	23	4	25	5
Beaufort-Savannah ADI	568	75	3	78	2	80	1
Hampton-Charleston ADI	562	15	15	18	22	20	20
Allendale-Augusta ADI	418	----------	2	----------	4	----------	4
Bamberg-Augusta ADI	395	20	53	23	56	25	55
Darlington-Florence ADI	545	----------	7	----------	10	----------	10
Dillon	407	----------	----------	----------	1	----------	1
Charleston	945	100	----------	100	----------	100	----------
Berkeley	1,100	100	----------	100	----------	100	----------
Dorchester	569	100	----------	100	----------	100	----------
Georgetown	813	75	25	90	10	93	7
Williamsburg	931	75	25	90	10	93	7
Clarendon-Charleston ADI	598	48	52	65	35	65	35
Colleton	1,048	95	5	97	3	98	2
Orangeburg-Columbia ADI	1,105	40	32	45	30	45	30
Calhoun-Columbia ADI	377	5	63	8	67	10	65
Sumter-Columbia ADI	665	----------	85	----------	90	----------	90
Lee-Columbia ADI	409	----------	43	----------	50	----------	50
Richland-Columbia Metro ADI	748	----------	7	----------	12	----------	12

[7] Present Grade B coverage estimated from Applicant's Exhibit 2, Fig. 1

DISTRIBUTION OF CHARLESTON TELEVISION REVENUES AND INCOME [1]

	Charleston	WCSC-TV		WCIV		WUSN-TV	
		Amount	Percent	Amount	Percent	Amount	Percent
B/c Revenues:							
1969	$2,805,399	$1,157,501	41.3	$896,918	32.0	$750,980	26.8
1968	2,595,554	1,115,890	43.0	798,777	30.8	680,887	26.2
1967	2,352,784	963,855	41.0	683,986	29.1	704,943	30.0
1966	2,320,513	955,079	41.2	635,856	27.4	729,578	31.4
1965	2,067,921	892,044	42.7	550,619	26.4	645,258	30.9
1964	2,101,718	929,930	44.2	463,373	22.0	708,415	33.7
Network sales:							
1969	801,575	280,072	34.9	265,473	33.1	256,030	31.9
1968	762,715	261,410	34.3	261,906	34.3	239,399	31.4
1967	776,717	265,295	34.2	259,741	33.4	251,681	32.4
1966	801,248	278,222	34.7	249,440	31.1	273,586	34.1
1965	761,198	272,516	35.8	250,759	32.9	237,923	31.3
1964	793,414	270,785	34.1	234,109	29.5	289,520	36.5
Spot sales:							
1969	948,744	534,548	56.3	230,098	24.3	184,098	19.4
1968	672,899	411,922	61.2	156,323	23.2	104,656	15.6
1967	569,163	338,086	59.4	85,737	15.1	145,340	25.5
1966	609,334	321,640	52.8	122,278	20.1	165,416	27.1
1965	502,197	296,048	59.0	71,989	14.3	134,160	26.7
1964	526,964	345,930	65.6	31,341	5.9	149,693	28.4
Local sales:							
1969	1,357,185	473,603	34.9	499,696	36.8	383,886	28.3
1968	1,382,274	541,641	39.2	458,711	33.2	381,922	27.6
1967	1,145,977	418,895	36.6	382,616	33.4	344,466	30.1
1966	1,072,297	402,920	37.6	320,515	29.9	348,862	32.5
1965	931,393	355,100	38.1	264,771	28.4	311,522	33.4
1964	862,802	319,236	37.0	222,526	25.8	321,040	37.2
Income:							
1969	178,480	153,784	[2] 50.0	153,825	[2] 50.0	129,129	--------
1968	243,651	147,166	[2] 53.6	127,393	[2] 46.4	30,908	--------
1967	266,988	126,335	47.3	67,640	25.3	73,013	27.3
1966	475,057	136,391	28.7	137,428	28.9	201,238	42.4
1965	330,329	100,418	30.4	80,631	24.4	149,280	45.2
1964	368,127	129,567	35.2	22,601	6.1	215,959	58.7

[1] Broadcast Revenues, Form 324, Schedule 1, line 19; Network Sales, line 6; Spot Sales, line 8, Local Sales, line 9 (1964-69).

[2] Percentages based on total income of WCSC-TV and WCIV.

DISTRIBUTION OF COLUMBIA TELEVISION REVENUES AND INCOMES[10]

	Columbia	WIS–TV		WNOK–TV		WOLO–TV	
		Amount	Percent	Amount	Percent	Amount	Percent
B/c revenues:							
1969	$3,750,003	$2,799,751	74.7	$661,976	17.7	$288,276	7.7
1968	3,387,724	2,513,297	74.2	588,879	17.4	285,548	8.4
1967	2,864,911	2,148,759	75.0	490,985	17.1	225,167	7.9
1966	2,786,251	2,076,756	74.5	514,058	18.4	195,437	7.0
1965	2,492,795	1,885,127	75.6	423,328	17.0	184,340	7.4
1964	2,260,303	1,705,151	75.4	380,476	16.8	174,676	7.7
Network sales:							
1969	726,789	504,029	69.4	118,718	16.3	104,042	14.3
1968	734,810	521,353	71.0	107,541	14.6	105,916	14.4
1967	687,790	483,227	70.3	109,680	15.9	94,883	13.8
1966	662,732	446,141	67.3	110,408	16.7	106,183	16.0
1965	633,042	431,794	68.2	106,345	16.8	94,903	15.0
1964	574,663	394,598	68.7	102,819	17.9	77,246	13.4
Spot sales:							
1969	2,012,541	1,832,200	91.0	115,857	5.8	64,484	3.2
1968	1,684,947	1,528,723	90.7	102,918	6.1	58,306	3.2
1967	1,492,296	1,422,729	95.3	39,037	2.6	30,530	2.0
1966	1,534,107	1,456,109	94.9	45,225	2.9	32,773	2.1
1965	1,433,448	1,374,206	95.9	27,360	1.9	31,882	2.2
1964	1,259,207	1,209,098	96.0	29,037	2.3	21,072	1.7
Local sales:							
1969	1,313,180	724,016	55.1	465,370	35.4	123,794	9.4
1968	1,246,082	695,744	55.8	419,021	33.6	131,317	10.5
1967	988,809	537,245	54.3	350,329	35.4	101,235	10.2
1966	913,601	491,001	53.7	361,736	39.6	60,864	6.7
1965	740,066	380,804	51.5	299,848	40.5	59,414	8.0
1964	673,191	333,311	49.5	252,000	37.4	87,880	13.1
Income:							
1969	1,201,576	1,193,459	[11] 95.7	53,286	[11] 4.3	(45,169)	
1968	1,155,498	1,080,577	93.5	60,859	5.3	14,062	1.2
1967	967,915	909,115	[11] 91.3	86,888	[11] 8.7	(28,088)	
1966	1,077,046	929,800	86.3	138,982	12.9	8,264	.8
1965	951,853	856,504	90.0	90,740	9.5	4,609	.5
1964	695,054	668,314	[11] 92.0	57,859	[11] 8.0	(31,119)	

[10] Broadcast Revenues, Form 324, Schedule 1, line 19; Network Sales, line 6; Spot Sales, line 8; Local Sales, line 9 (1964–68); 1969 figures based on Statements of Messrs. Simpson and McElveen.
[11] Percentage based on total Income of WIS–TV and WNOK–TV.

APPENDIX IV

COUNTY ANALYSIS—APPLICANTS' NATIONAL SPOT SPECIALIST

(1) *Clarendon County*—This county has been repeatedly cited by the UHF stations as harbinger of dire things to come. Its switch in 1969 from the Columbia to the Charleston ADI is cited by the UHF stations as a prime example of the deterioration of the Columbia ADI, as well as the elimination of UHF audience. However, the only Columbia audience in Clarendon County belonged to WIS–TV. The UHF stations had no reported share of viewing in 1967 and have none today even after up to two years of operation with improved facilities. The reassignment of this county to Charleston impinged only upon WIS–TV which, with 42%, still maintains a larger share of viewing than any Charleston station. With a zero audience in this county, the suggestion that the UHF stations could have "saved" Clarendon for the Columbia ADI is difficult to accept. Clarendon County will remain in the Charleston ADI whether or not the proposed tower is granted. In the unlikely event that it is reassigned to the Columbia ADI, the balance of power will be between Charleston stations and WIS–TV.

(2) *Lee County*—There is no possibility whatever of Lee County being captured from the Columbia ADI. After three successive coverage studies, 1965, 1967 and 1969, the Charleston stations still have no reported share of audience—that is, zero. Columbia currently holds a 57.5% share, 96.9% of which belongs to WIS–TV. Most of the remaining audience, 42.3%, goes to Florence.

(3) *Sumter County*—For the same reasons as above, there is no possibility of this county moving into the Charleston ADI. The three Charleston stations combined account for a 3.3% share of viewing, which is less than half that currently held by WNOK–TV and WOLO–TV. The Columbia market dominates this county with a 73.6% share, 89% of which belongs to WIS–TV. WBTW, Florence, shows a 22.1% share.

(4) *Calhoun County*—Smallest of any county in both the Columbia and Charleston ADI, Calhoun's ADI designation has little bearing on the total audience of any market in the area. However, as in the case of Lee and Sumter Counties, there is no possibility of Calhoun becoming a part of the Charleston ADI. The Columbia stations currently have a 70.5% share of viewing, 91.4% of which is controlled by WIS–TV. The Charleston stations combined have a 16.8% share while two Augusta stations (both VHF) possess a 12.1% share. In this situation, Charleston TV would be competing against three established VHF stations representing each of the three networks. The likelihood of Charleston capturing the dominant share of the audience, or of the WIS–TV share being reduced to something less than 50%, is, according to the applicants' witness, extremely remote.

(5) *Orangeburg County*—This is the only one of the so-called "crucial" counties that stands even the slightest chance of moving into the Charleston column. Again, in his view, this will not happen for several reasons:

a. *Three-way Competition*—Columbia currently maintains the dominant share of audience with 41.3%, virtually all of which (97%) is attributable to WIS–TV. Charleston has a 34.5% share and Augusta, represented by two VHF stations, has a 23.7% share. Paralleling the situation in Calhoun, the Charleston stations would have to divert audience not only from WIS–TV, but from the entrenched viewership of two Augusta VHF stations whose share is twice as strong as in Calhoun.

b. *Columbia Orientation*—As stated by representatives of the two UHF stations participating in this hearing, each of the five "crucial" counties is oriented more toward the Columbia trading area than to Charleston.[1] In terms of distance, the proposed Charleston tower site is 76 miles from the Orangeburg County seat compared to 39 miles for the Columbia UHF site and 44 miles for the WIS–TV site. Newspaper circulation figures cited by WNOK–TV (p. 16) reveal that Charleston newspapers have no reported readership in Lee, Sumter or Calhoun Counties, while in Orangeburg the total circulation is only 38% as large as the Columbia newspapers (Appl. Ex. No. 3, pp. 29–32).

According to applicants' specialist national spot is the only portion of the UHF station's income that might be affected by the potential loss of an ADI county. Even if Orangeburg shifted, the UHF stations would continue to develop audiences in this county which would be reported by the rating services. Thus, there would be no economic impact. But there could be economic impact to the extent that a change in Columbia's ADI rank causes advertisers to re-evaluate the market. The only source of station income for whom ADI rankings have meaning is the national advertiser. Local advertisers will continue to invest in the Columbia market without regard to its ADI rank or size. Network revenues are a function of total audiences delivered for network programs and have no relationship to ADI rank (Tr. 874; Appl. Ex. No. 3, p. 42).

His conclusion is that in any analysis of the Columbia market the UHF difficulty comes from within, not without. The overwhelming competitive problem facing these stations is the dominance of WIS–TV, which accounts for a share of the ADI audience ranging from a low of 45% to a high of 73% during key day parts, according to the November 1969 ARB, and currently receives better than 90% of the national spot volume. To the extent that the Charleston tower will work to diminish the dominance of WIS–TV in the area between these two markets, he contends that the UHF stations will emerge in a stronger competitive position as a result. Since 1967, with no change in the Charleston facility, audiences captured by the Charleston stations in the five counties from WIS–TV

[1] See page 19 of Columbia Television Broadcasters, Inc., Exhibit No. 1 and pages 21–22 of Palmetto Exhibit No. 1.

have already improved the UHF competitive relationship with their principal adversary:

[In percent]

	1967		1969	
	Share of 5-county viewing hours	Share of Columbia viewing hours	Share of 5-county viewing hours	Share of Columbia viewing hours
WIS-TV	59.5	95.8	53.1	92.8
WNOK-TV plus WOLO-TV	2.6	4.2	4.1	7.2

Source: ARB Coverage Studies, 1967 and 1969.

The above table, which is based on the shares of audience developed by the three Columbia stations in the "critical" five county area expresses the shares of audience of the Columbia UHF stations with respect to that of WIS–TV. Comparing their 1967 performance to their 1969 performance in the five critical counties, the table demonstrates that while the UHF stations have increased their share of viewing points by 58% relative to their competitor WIS–TV, the Columbia UHF stations' growth has been 71%. The Columbia UHF stations are now delivering a 7.2% share of all Columbia viewership in these counties compared to only a 4.2% share two years ago. Any improvement in the audience of the Charleston stations at the expense of WIS–TV will accelerate this pace. Thus, he concludes, the Charleston maximum service tower could prove to be a blessing in disguise for the Columbia UHF stations (Appl. Ex. No. 3, pp. 45–46).

APPENDIX V

Concerning Clarendon County the opinion was:

"When ARB shifted Clarendon County from the Columbia ADI to the Charleston ADI in 1969, the WIS–TV home circulation, by various time categories, was not materially reduced by the designation. When ARB shifted Clarendon to the Charleston ADI, WOLO–TV and WNOK–TV did not lose circulation; they never had measured circulation in the county. On the other hand, now that Clarendon is part of the Charleston ADI, there is no condition which precludes WOLO–TV and/or WNOK–TV from developing increasing viewership in the county, if their present signals are capable of being received by the public and their programs are sufficiently attractive." (Appl. Ex. No. 14, p. 13.)

The following is the appraisal of the predicted loss of Sumter, Lee and Calhoun Counties:

"WIS–TV's 1969 penetration into *Sumter, Lee and Calhoun* Counties is so deep and extensive—67.5%, 55.7% and 64.5% respectively, of the total viewing hours—that I do not believe that a grant of the maximum service tower could possibly result in a change of their ADI designation from Columbia to Charleston.

"Despite [the] theoretical assumptions, my practical experience with TV station signal penetration in relation to effective circulation has never led me to conclude that Sumter, Lee and Calhoun counties could be drawn into the ADI (dominant) orbit of the Charleston Market if the Charleston applications are granted. Every experienced TV broadcaster knows that signal coverage is definitely not tantamount to audience circulation. Engineering contours alone do not delineate TV market areas. TV homes covered by given signal strengths are not automatically equivalent to TV home audiences. Neither does signal coverage determine viewership.

"Throughout the TV industry, overlap of Grade B signals is the characteristic feature, not the exception, in the vast majority of markets. Providence-Boston and Washington-Baltimore are two typical illustrations of the fact that TV signal contours are not translatable into audience circulation. The Providence TV stations transmit a Grade A to B service signal into most parts of the Boston Metropolitan area, and vice versa. Yet, audience surveys regularly fail to reveal measurable Providence station audience in the Boston TV market or

vice versa. The same holds true regarding the Washington-Baltimore TV markets, so far as effective circulation is concerned. Each of the Washington and Baltimore TV stations has its respective audience market, despite substantial overlap of Grade B signals.

"Many factors other than signal strength and engineering contours determine TV audience circulation. Fundamentally, depending on where a viewer resides within the economic-social orbit of a given city, he will tend to view regularly the TV stations of that city, regardless of the availability of outside signals. Traditional newspaper circulation definitely affects and helps to shape the demographic orbit of a city. For example, as one progresses northward from Washington, beyond Laurel, the Baltimore newspapers become more dominant than do the Washington newspapers. Trade habits of the public tend to favor one city as against another despite overlap of TV or radio signals. The news and happenings of one city always have more attraction for the people within that city's orbit than news and happenings of some other city, despite that latter city's TV or radio signal availability.

"From my knowledge of the economics of many TV stations and the overlap of Grade B signals from different markets, it is inconceivable to me that the Charleston TV signals emanating from the proposed tower could reshape the basic viewing habits of the public in Sumter, Lee or Calhoun Counties. These counties are within the economic-social-employment orbit of Columbia, with only a secondary pull from Florence in Sumter and Lee Counties." (Tr. 616, 617, 622; App. Ex. No. 14, pp. 13–15.)

Based upon the foregoing, it was concluded as follows:

"It is clear that a grant of the Charleston applications will result eventually in some increase in circulation, by one or more Charleston stations, in Sumter, Calhoun and possibly Lee counties. However, it is my considered opinion and judgment that the full, combined potential viewership of the Charleston stations has no practical probability of dominating the audience of these three counties and, thereby, shifting their ADI designation away from its Columbia designation.

"*Sumter County* is currently 73.6% dominated by the three Columbia stations. Another 22% share of the audience goes to Florence. The County is wedded to the Columbia metropolitan market by virtue of factors such as immediate geographic location, Columbia newspaper circulation, trade habits of the public and news interests of the public. It is inconsistent with my television station experience to believe that availability of the proposed Charleston TV signals would reshape significantly the TV viewing habits of the Sumter County population.

"With the recently improved technical and signal facilities of WOLO–TV and WNOK–TV, and with the progressive expansion of all-channel set penetration, I would expect that these two stations will progressively enlarge their share of the Sumter audience at the expense of WIS–TV and the Florence station. Columbia UHF station competition is far more likely to affect Florence TV station circulation, within Sumter County, than is the proposed Charleston TV station competition. From experience, I cannot conceive of Charleston TV stations achieving a significant audience circulation in Sumter County (i.e., not more than 25%). However, I do believe that the improved signal coverage of WNOK and WOLO will, in all likelihood, reduce Florence TV station circulation and audience shares in Sumter County.

"So far as Lee County is concerned, 99.8% of the audience now goes to Columbia (57.5%) and Florence (42.3%). The physical location of Lee County precludes, in my opinion, the eventual development of more than a fractional audience share for any or all Charleston stations, operating as proposed. To the best of my knowledge, no given county, 99% dominated by given TV stations of given markets, has ever been shifted to the ADI area of another market or, for that matter, significantly reshaped in viewer circulation habits by the improvement in signal service from another market.

"Calhoun County is dominated by the Columbia TV stations which have a 70.5% share, of which WIS–TV has 64.5%. Its geographic proximity and socio-economic ties to Columbia will, in my opinion, tend to preserve the Columbia share of audience domination, regardless of a grant of the Charleston applications. In fact, with the recently improved technical facilities of WOLO–TV

and WNOK-TV, and the progressive expansion in all-channel set penetration, it is far more logical to expect the Calhoun public to utilize Columbia TV station service than to switch to Charleston TV station news, weather, advertising and other local Charleston programming.

"Calhoun audience viewing habits are not likely to be reshaped toward Charleston TV stations merely because the proposed signals become available from an engineering viewpoint. Calhoun County's substantial affinity is with Columbia—not with Charleston" (Tr. 624; Appl. Ex. No. 14, pp. 14–17).

APPENDIX VI

The seven counties analyzed display both homogeneity in some characteristics and vast differences in others. Agriculture is an important activity in all counties, providing employment to many of the people, supporting the trading towns and influencing the attitudes and outlooks of the population. But the rural and small-town way of life is slowly being replaced throughout the area by more urban activities. Change has influenced the population the least in Bamberg and Calhoun Counties, near the southern end of the area, and these areas, along with Marion County, further north, are the parts of the seven county area which are most strongly tied to agriculture. Though manufacturing plants exist in these three counties, the people are still primarily engaged in farming or in town and village activities which serve the farms. Florence, Horry, Orangeburg and Sumter have taken long strides towards urbanization and employment of the labor force in manufacturing. Though all of these counties have large numbers of farms, their leading towns carry on a diversity of economic activities and all four of the counties have been moved through special circumstances towards higher incomes for the people and other changes which put them closer to the mainstream of American life. There are, of course, extremes of activity within even this more prosperous group of counties; much of Orangeburg, outside the town of Orangeburg, is still little affected by change, while Myrtle Beach, in Horry, will during a summer month attract teeming crowds to its resort attractions (Appl. Ex. No. 9, pp. 2–4).

Basic characteristics of the seven county areas are as follows:

(1) Nearly one-half of the population is nonwhite, but nearly all of the nonwhite population is Negro. There are no other racial groups of consequential numbers than whites and Negroes. No large national origin groups of foreign birth or parentage live in the area. The population is nearly all native born.

(2) The median age of the population is very low and there is relatively a very low proportion of the population in the 20–64 year age group from which working people are most frequently drawn.

(3) The medial level of educational attainment of the population is relatively very low. Although the number of high school graduates and college graduates residing in the area in 1960 was relatively as great or greater than was typical for the United States, limited formal education is an important characteristic of the people of the area.

(4) Low individual and family incomes prevail generally throughout the area, with the problem continuing to be greatest in the counties which are least touched by industrialization and urbanization. Many of the people and families are at poverty levels (Appl. Ex. No. 9, p. 4).

In addition to the above-characteristics of the seven county area which were demonstrated by study of quantitative data, there are the following which are not readily evident from statistics:

(1) There are six higher educational institutions in the area. They are Voorhees College, at Denmark, Bamberg County; South Carolina State College and Claflin College, with adjoining campuses in Orangeburg; Morris College at Sumter; the Florence regional campus of the University of South Carolina; and the Coastal Carolina campus of the University of South Carolina, in Horry County. The first four colleges named are predominantly Negro in student population, not unexpectedly when one considers their location in an area that still has a very heavy Negro population.

(2) The agriculture of the area leads some of its people to occupations and activities which are not readily evident from statistics. Amidst farms turning

to beef cattle and mechanization in Bamberg and Orangeburg Counties, there are small vegetable-growing operations, producing peas, beans and other food crops. In Pee Dee towns, during the late summer, there are people working in the tobacco auction markets, such as those at Conway and Loria in Horry County, Mullins in Marion County, and Timmonsville in Florence County. Tobacco brings to these counties leaf redrying and processing plants, operated by firms that export much of their product to a large number of nations.

(3) Substantial transient highway traffic provides employment in the clusters of motels and restaurants in Florence, Orangeburg and Bamberg. During the summer beach season, many people work in hotels, motels, eating places, recreational facilities, cottage rental offices and other activities at Myrtle Beach and nearby resort centers of Horry County.

(4) The town of Florence is a railroad junction center and this provides employment for a significant cluster of people in the area (Appl. Ex. No. 9, pp. 4–5).

On March 17, 1970, submitted to each of the commercial television stations was a supplemental statement concerning the characteristics of Clarendon, Hampton and Lee Counties. The fundamental conclusions reached in the earlier study of the Seven County Area also apply to Clarendon, Hampton and Lee Counties. These counties are still heavily influenced by agriculture. Incomes are low, educational attainment of the population is limited and movement towards urbanization and industrialization is slow. These particular points relating to the three counties require attention:

(1) All three have majorities of nonwhite population, whereas for the Seven County area as a whole, the population was in 1970 about evenly divided between whites and nonwhites.

(2) The three counties are most like Bamberg, Calhoun and Marion, of the counties in the Seven County area. This means that Clarendon, Hampton, and Lee are more heavily agricultural, less urbanized and generally less characterized by employment of their people in manufacturing than are Florence, Horry, Sumter and parts of Orangeburg counties.

(3) Among the three counties for which data has now been added. Hampton shows the highest percentage of its population employed in manufacturing. It appears that about 30 percent of the employment in Hampton is in manufacturing; a large part of the explanation lies in the location of the substantial plant of the Westinghouse Manufacturing Company in Hampton (Tr. 564, 577; Appl. Ex. No. 9, p. 5a).

This study and other available statistical data were used by the three stations to determine the significant groups and interests in the area and to provide essential background information for subsequent interviews. Following this, key station personnel from each station conducted in-depth interviews with a total of 183 representatives or spokesmen for the leading groups and interests in the ten counties. Of these, WCSC–TV conducted 65 interviews, WCIV 68 and WUSN–TV 50. Representatives of each stations conducted interviews in each of the ten counties surveyed. They rotated the occupations and positions from county to county so that each station would have a balanced observation of the whole area. Since in previous surveys the three stations had elicited information concerning program preferences and tastes, the interviews were confined to a discussion of the significant problems facing the particular area in which the interviewee resided. Interviews were conducted with government officials (23), and representatives of business (38), labor (11), agriculture[1] (20), educational institutions (25), religious denominations (15), the professions (12), youth (9), welfare (7), social and cultural organizations (9), military (5) and other groups including Negro organizations, recreation and eleemosynary organizations (9). By race, the interviews included 144 whites and 39 blacks. Reports on all of these interviews were then compiled and furnished to each of the three stations for evaluation (Tr. 994, 1005, 1029–30, 1041, 1070; Appl. Ex. No. 8, pp. 2–3, 84).

In addition, the three stations engaged an experienced interviewer to conduct a telephone survey of the general public in the ten county gain area. The number

[1] The General Manager of WCIV made the point that in a farming county one could ascertain agricultural problems and needs during the course of interviews with other than farmers, or representatives of farm organizations. He said the Mayor, or the Doctor or the Druggist might bring these matters up and from his experience in the area know what he was talking about (Tr. 1034).

of interviews in each county represented that county's share of the total population of the ten-county area. Within each county all urban communities were surveyed. Farm houses were reached since they were listed in the telephone directories and were subject to random selection. She was specifically instructed to inquire about community needs and problems, as distinguished from program preferences. She conducted 474 interviews and prepared a report on each interview. Copies of these reports were made available to each of the three stations for evaluation. Upon review of the data compiled by her, 141 additional telephone calls were made by station personnel in March 1970, because the stations felt that Mrs. Gilland's survey had not reached a sufficient number of Negroes and a sufficient number of males. Personnel of each of the three stations made approximately the same number of calls within each of the ten counties surveyed (Tr. 991–92; Appl. Ex. No. 8, pp. 3, 167; Appl. Ex. No. 10).

A statistical analysis of the telephone contacts shows the following breakdown:

	Number	Percent
Geographic division:		
Bamberg	22	3.6
Calhoun	17	2.8
Clarendon	40	6.5
Florence	131	21.3
Hampton	24	3.9
Horry	99	16.1
Lee	37	6.0
Marion	42	6.8
Orangeburg	92	15.0
Sumter	111	18.0
Total	615	100
Race:		
White	350	56.9
Black	257	38.9
Unknown	8	4.2
Total	615	100
Sex:		
Male	220	35.8
Female	395	64.2
Total	615	100

	Number	Percent
Income:		
Over $20,000	4	.7
$15,000 to $20,000	14	2.3
$10,000 to $15,000	48	7.8
$5,000 to $10,000	142	23.1
Under $5,000	232	37.5
Unknown	175	28.6
Total	615	100
Age:		
Over 60	142	23.1
50 to 60	138	22.5
40 to 50	103	16.7
30 to 40	94	15.3
20 to 30	82	13.2
Under 20	44	7.2
Unknown	12	2.0
Total	615	100

(Appl. Ex. No. 8, p. 167)

As a result of its evaluation of the information obtained as a result of the foregoing surveys, as well as that obtained as a result of prior surveys, WCSC–TV concluded that the more significant problems or needs of the gain area are as follows:

(1) Stop drain of most able, and best educated, youth from the area. The percentage of the best Negro youth leaving is alarmingly high.

(2) Adult education and training is of utmost importance. Motivate, persuade and recruit uneducated, unskilled adults for programs now provided by State and local agencies; get them off welfare.

(3) Break down the communication barrier between Black and White. There is a strong need for Negro representation in public office and community organizations to enable both races to work together to solve the many problems.

(4) Find prompt means of preserving the public school system now endangered by busing.

(5) Provide a great deal more low cost housing, particularly rental. Get everyone into a decent place to live. Eliminate the remaining pockets of abject poverty.

(6) Find from among the people strong, dedicated leadership for this period when the whole way of life is changing from an age-old agrarian economy to an industrial one. These leaders must provide vision, give direction, motivate and persuade those who now must find their way in this new era.

(7) There is a great need for organized, supervised leisure hour activities for youth, especially teenagers. There is great concern about youth getting into trouble because of being idle, particularly with no decent places to go at night, not even the movies.

(8) Negro sections are particularly in need of sewage and water systems, garbage collection, sidewalks and other city services. In sections just outside city limits (largely Negro) there is virtually no service, not even disposal of garbage.

(9) The farmer is beset by a myriad of problems and the small farmer is phasing out. There is a need for the remaining farmers to abandon their old individualism and work cooperatively in planning what to plant and what to sell to processing plants and food chains. The farmer also needs financial and educational help as he must do many new, expensive things to survive.

(10) Transportation for the poorer people who live outside the towns is a bad problem. They don't have it and can hardly afford it. Transportation systems must be set up to get these people to the schooling and training centers in the towns (many far away from where they live); also to get them to town-located health centers.

(11) The cry for more industrial plants is heard on every hand and at all levels. The Negro is especially vocal about the need of jobs. Principally the Negro, but also the white man, has only seasonal work in farm occupations and in the tourist resorts which are largely of a summer nature.

(12) Another cry is for a giant clean up of streets, highways, yards, slums. Along with a clean up must go a continuing campaign to teach people to keep their premises and communities clean. Pride and self-respect must be instilled.

(13) Pollution is a growing problem in some parts of these counties. Industry is the main offender. People contribute much of it. Open privies and septic tanks add greatly to it.

(14) Family planning is important. Over-population among those least able to take care of themselves is a serious problem.

(15) Youth must be jarred out of apathy and helped to find goals and purpose . . . given clear vision of what can be attained.

(16) There is a need for tax reassessment and education of the public about taxes.

(17) There is a need for improved hospital services and more Day Care Centers since in many families the wife must supplement her husband's low income. The number of existing facilities is entirely inadequate (Appl. Ex. No. 11, pp. 1–3).

109–026—73——10

F.C.C. 73R-60

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTHERN BROADCASTING CO. (WGHP-TV), HIGH POINT, N.C. For Renewal of Broadcast License	Docket No. 18906 File No. BRCT-574
FURNITURE CITY TELEVISION CO., INC., HIGH POINT, N.C. For Construction Permit for New Television Broadcast Station	Docket No. 18907 File No. BPCT-4302

MEMORANDUM OPINION AND ORDER

(Adopted February 2, 1973; Released February 6, 1973)

BY THE REVIEW BOARD:

1. After Southern Broadcasting Company (Southern) filed a petition for leave for leave to amend its application, Furniture City Television Company, Inc. (Furniture City) filed a petition for enlargement of the issues which is now before the Board.[1] Furniture City seeks 1.65 and basic qualifications issues based on information concerning changes in broadcast and other business interests revealed in the requested amendment.

2. There is no disagreement that the changes relative to Messrs. Slick and Butler and the Slick Corporation in which they have interests were reported more than thirty days after they took place. Moreover, it is not possible to ascertain when some of the other changes in business and broadcast interests took place, and this failure strongly suggests that these, too, were not brought to the Commission's attention within the required time period. In view of the foregoing and the other data revealed in the pleadings, modification of existing 1.65 issue is warranted. However, since there is some question whether the derelictions are of sufficient significance to bear adversely on the basic qualifications of Southern, the issue will permit a determination of the effect the reporting failures have on the comparative and/or basic qualifications of that applicant.

3. Accordingly, IT IS ORDERED, That the Furniture City Television Company, Inc. petition to enlarge issues, filed October 19, 1972, IS GRANTED in the respects hereinafter indicated and otherwise IS DENIED;

[1] The petition for leave to amend was filed October 11, 1972; it has not been disposed of. The petition to enlarge was filed October 19, 1972; the Broadcast Bureau's comments, on October 30, 1972; Southern's opposition, on November 8, 1972; Furniture City's reply to the Bureau, on November 9, 1972; and Furniture City's reply to the opposition, on November 20, 1972.

4. IT IS FURTHER ORDERED, That the Rule 1.65 issue against Southern Broadcasting Company (WGHP-TV) added by the Review Board by Memorandum Opinion and Order (— FCC 2d——, 25 RR 2d 1138, released December 8, 1972), IS MODIFIED to include the matters as indicated herein; and

5. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the issue added herein SHALL BE on Furniture City Television Company, Inc., and the burden of proof SHALL BE on Southern Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72D-66

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
SOUTHLAND, INC., LAUREL, MISS.	Docket No. 19415 File No. BPH-7405
SOUTH JONES BROADCASTERS, INC., ELLISVILLE, MISS.	Docket No. 19416 File No. BPH-7445
MICHAEL D. HAAS, BAY SAINT LOUIS, MISS.	Docket No. 19465 File No. BP-18154.
ROBERT BARBER, JR., GEORGE SLIMAN, AND F. M. SMITH, D.B.A. GULF BROADCASTING CO., GULFPORT, MISS.	Docket No. 19466 File No. BP-18462
HWH CORP., MCCOMB, MISS.	Docket No. 19467
For Construction Permits	File No. BP-13478

APPEARANCES

Leo Resnick, Esq. and *Simon Tucker, Esq.*, on behalf of Southland, Inc.; *Eugene F. Mullin, Esq.* and *Sheldon C. Hofferman, Esq.*, on behalf of South Jones Broadcasters, Incorporated; *Marvin Rosenberg, Esq.*, on behalf of Michael D. Haas; *James A. Gammon, Esq.*, on behalf of Robert Barber, Jr., George Sliman, and F. M. Smith, d/b as Gulf Broadcasting Company; *Eugene F. Mullin, Esq.* and *Sheldon C. Hofferman, Esq.*, on behalf of HWH Corporation; *Michael L. Glaser, Esq.*, and *J. D. Krause, Esq.*, on behalf of Southwestern Broadcasting Company; and *William D. Silva, Esq.*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

PARTIAL INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JAY A. KYLE

(Issued October 20, 1972; Effective December 14, 1972 pursuant to Section 1.276 of the Commission's Rules)

PRELIMINARY STATEMENT

1. The Commission by a Memorandum Opinion and Order (FCC 72-232) released on March 23, 1972, designated the applications of Michael D. Haas, Gulf Broadcasting Company (Gulf) and HWH Corporation for a hearing. In the order of designation, the following issue [1] was included against Gulf as follows:

3. To determine whether Gulf Broadcasting Company has complied with the provisions of Section 1.65 of the Commission Rules by keeping the Commission advised of substantial and significant changes as required by Section 1.65, and,

[1] **Hereinafter sometimes referred to as the 1.65 issue.**

if not, the effect of such non-compliance on its basic or comparative qualifications to be a Commission licensee.

2. Pursuant to a request of the Broadcast Bureau, the Commission consolidated the proceeding involving Michael D. Haas, Gulf Broadcasting Company and HWH Corporation with the proceeding of Southland, Inc. and South Jones Broadcasters, Incorporated for the purpose of resolving the Section 1.65 issue. This was accomplished by a Memorandum Opinion and Order (FCC 72–491), released June 9, 1972 which provided for a hearing "before Hearing Examiner [Administrative Law Judge] Jay A. Kyle for the limited purpose of receiving evidence and the issuance of an Initial Decision regarding the Section 1.65 issue specified in the order, FCC 72–232, released March 23, 1972." It is to be noted at this point that George M. Sliman and F. M. Smith, partners, along with Robert Barber, Jr., in the Gulf Broadcasting Company, each hold one-third of the shares in Southland, Inc. Pursuant to the issuance by the Commission of its Memorandum Opinion and Order released June 9, 1972, referred to above, a prehearing conference was held on July 18, 1972 and the hearing on the Section 1.65 issue was held on September 6, 1972. The Broadcast Bureau filed Proposed Findings of Fact and Conclusions of Law on September 14, 1972 while Gulf filed its Proposed Findings of Facts and Conclusions of Law a day later and its Reply Findings on September 22, 1972.

Findings of Fact

3. Robert Barber, Jr., George Sliman and F. M. Smith are members of a general partnership d/b as Gulf Broadcasting Company. In specifying a 1.65 issue against Gulf, the Commission noted that Smith and Sliman each own one-third of the stock in Southland, Inc.

4. Smith and Sliman acquired their present interests in Southland on April 12, 1965. Southland, Inc. is the licensee of WLAU (AM) in Laurel, Mississippi and on March 3, 1971 it filed an application with the Commission for a new FM broadcast facility in Laurel, Mississippi. The Laurel application disclosed the interests of Sliman and Smith in the Gulf application. Gulf failed to amend its previously filed application for Gulfport, Mississippi to reflect this fact until February 23, 1972. However, it is pointed out that in April, 1971 Southland of Alabama, Inc. in which Sliman and Smith have interests applied to the Commission as assignee for an assignment of license of WLIQ, Mobile, Alabama. That application fully disclosed the interests of Sliman and Smith in both the Laurel and Gulf applications. In early 1972 Smith and Sliman were notified by their new communications counsel that the Gulf application should be amended to reflect their interests in the Laurel FM application. Prior to this time neither Smith nor Sliman were aware of this requirement. Upon advice of counsel, the application was promptly amended on February 23, 1972 which was approximately a month prior to the Commission's designation order in this proceeding.

Conclusions

1. It is apparent that Gulf Broadcasting Company failed to comply with Section 1.65 of the Commission's Rules in that it did not amend its application within 30 days to reflect the interests of two of its principals in the Southland application.

2. It is concluded that this failure on the part of Gulf was the result of an inadvertent omission and the record is clear that Gulf had not been advised by its prior counsel that the amendment was necessary.

3. As Sliman and Smith are principals and licensees of the Commission, their failure to comply with the Rules and Regulations of the Commission fall short of being excusable but, on the other hand, there is nothing in the record to indicate that these individuals have been other than candid with the Commission and have maintained a good faith effort to have their applications current and correct. However, it is the duty of applicants with applications pending before the Commission to keep their applications up-to-date and to furnish the Commission with the most current and complete information respecting a given application. Each application must be complete and the Commission must not be required to rely on information filed in some other application or through some other manner.

4. The Commission stated in *Channel 41, Inc.*, 24 FCC 2d 603, 19 RR 2d 879 (1970):

> ***We do not take lightly a failure to amend an application to indicate new broadcast interests.*** We note, however, that the omitted information in Channel 41, Inc.'s application was on file in another application, indicating that there was no motive for concealment; that the omitted information does not pertain to other aspects of the applicant's qualifications, financial, for example, and that we have only this one isolated instance. We believe, therefore, that in these circumstances no further inquiry or sanction is required.[2] (Italics supplied.)

As noted principals of Gulf did disclose in subsequently filed applications complete information regarding other broadcast interests as of the date of the filing of each application. There is, therefore, no definite motive to conceal apparent. Consequently, Gulf should not be disqualified for its failure to comply with Section 1.65 of the Commission Rules. However, this failure does reflect a degree of carelessness and laxity which conceivably should be considered in evaluating Gulf's comparative qualifications to be a Commission licensee. In this respect it is not deemed, however, that this failure should be a basis to deny an evaluation of Gulf's comparative qualifications to be a Commission licensee.

5. In view of the foregoing findings of fact and conclusions of law and upon careful evaluation of the entire record in this proceeding, it is concluded that insofar as the Section 1.65 issue is concerned, Gulf Broadcasting Company is qualified to be a Commission licensee.

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[2] See also *The Big Chief*, 29 FCC 2d 154, 21 RR 2d 971 (Rev. Bd., 1971).

Accordingly, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by the applicant or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Commission's Rules, Gulf Broadcasting Company is qualified to be a Commission licensee as it relates to the Section 1.65 issue here involved and the Gulf Broadcasting Company application is RETAINED in hearing status.

FEDERAL COMMUNICATIONS COMMISSION,
JAY A. KYLE, *Administrative Law Judge.*

F.C.C. 73-103

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re STARK COUNTY COMMUNICATIONS, INC., BREWSTER, OHIO For Certificate of Compliance	CAC-1007 OH246 CSR-260

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE NOT PARTICIPATING; COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT; COMMISSIONER REID CONCURRING AS TO THAT PORTION RELATING TO THE ACCESS REQUIREMENT AND DISSENTING WITH REGARD TO THE SIMULTANEOUS EXCLUSIVITY; COMMISSIONER WILEY CONCURRING IN THE RESULT.

1. On August 9, 1972, Stark County Communications, Inc., filed applications for certificates of compliance to commence cable television service at Beach City, Wilmot, Justus, Harmon, and Brewster, Ohio, communities located in the Cleveland-Lorain-Akron television market (the eighth largest). Proposing to operate from a common headend, Stark County requested the Commission's authorization to carry the following signals: WKYC-TV (NBC), WEWS (ABC), WJW-TV (CBS), WKBF-TV (Ind.), WVIZ-TV (Educ.), Cleveland, Ohio; WUAB-TV (Ind.), Lorain, Ohio; WAKR-TV (ABC), Akron, Ohio; WJAN (Ind.), Canton, Ohio. A twenty channel system with two-way capability will be constructed by Stark County. However, a waiver of Section 76.251 was requested to the extent that three separate access channels must be provided in each community to be served. Stark County justified this request by pointing to the small number of potential subscribers it could hope to attract in these communities. On December 20, 1972, we granted the first four applications and the requested waiver in *Stark County Communications Inc.*, FCC 72-1189, —— FCC 2d ——. While these applications presented issues identical to those present in the Brewster, Ohio application, they were unopposed. Summit Radio Corporation, licensee of WAKR-TV, Akron, Ohio, opposes a grant of the Brewster application.

2. Summit's opposition is prompted by Stark County's request for a permanent waiver of the network program exclusivity requirements of Section 76.91 of the Rules. After Stark County filed its applications for certification, Summit requested "same day nonduplication" protection against another ABC affiliate, WEWS, Cleveland, Ohio. Stark County responded to this by requesting a waiver of Section 76.91 of

the Rules, and Summit then filed its opposition, asserting that the matters of certification and program exclusivity were so interrelated as to require joint consideration. Discounting the small number of potential cable subscribers in Brewster,[1] Summit insists that every bit of audience is important. WAKR–TV is described as a "disadvantaged UHF station" competing at an "enormous disadvantage" with WEWS, an established VHF station operating in a much larger city.

3. Stark County's reasons for requesting a permanent waiver are: (a) the number of potential subscribers is less than one percent of WAKR–TV's average daily circulation; (b) the cost of installing switching equipment would be an onerous burden to a small system which has yet to begin service; (c) providing exclusivity protection to WAKR–TV would disrupt the viewing habits of its subscribers; (d) the Commission has followed a long-standing policy of deferring action on exclusivity requests involving systems with fewer than 500 subscribers; and (e) when the system serves 500 subscribers, it will render protection to WAKR–TV.

4. For the reasons given in our earlier decision involving Stark County, *id*, we will grant the Brewster application and approve a partial waiver of Section 76.251 of the Rules. However, should sufficient demand for these channels develop, we expect additional access channels to be made available. We are not inclined to approve a permanent waiver of Section 76.91 of the Rules. As we stated in the *Cable Television Report and Order*, the precedents and policies evolved under the former program exclusivity rule—Section 74.1103—were retained.[2] In *Spencer Community Antenna System, Inc.*, 22 FCC 2d 57 (1970), a temporary waiver of that rule was granted to a new cable system until it obtained 500 subscribers. The imposition of section 74.1103 was deferred, not because the number of subscribers represented a small percentage of a station's audience, the supposed disruption of a subscriber's viewing habits, or the costs of necessary switching equipment, but in view of the difficulties that vex any new cable system contemplating the inauguration of service in a small community. In the circumstances of that case, a temporary waiver of the program exclusivity rules served the public interest, and we believe a similar waiver is a reasonable response here.

In view of the foregoing, the Commission finds that a partial waiver of Section 76.251 of the Rules and grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That a partial waiver of Section 76.251 of the Rules IS GRANTED, and that the application for the certificate of compliance (CAC–1007) filed by Stark County Communications, Inc. for Brewster, Ohio IS GRANTED and an appropriate certificate of compliance will be issued.

IT IS FURTHER ORDERED, That the "Opposition to Application for Certification" filed October 16, 1972, by Summit Radio Corporation, IS DENIED.

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[1] It is not disputed that Stark County hopes for only 400 subscribers in a community of 650 homes.

[2] *Cable Television Report and Order*, 36 FCC 2d 143, 181 (1972).

IT IS FURTHER ORDERED, That Stark County Communications, Inc., IS DIRECTED to comply with the requirements of Section 76.91 of the Commission's Rules on its cable television system at Brewster, Ohio, 7 days after it obtains 500 subscribers.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

I dissent to the majority's grant of this certificate of compliance because Stark County Communications' public, educational and governmental access proposals do not comport with our rules.

Stark County Communications (Stark) is franchised to operate cable systems, through a common head-end, in three small communities located within the Cleveland-Lorain-Akron television market (the eighth largest market in the country). Stark also intends to serve, through the same head-end, two other unincorporated communities in the same area. Despite its use of a single head-end, Stark will thus provide these five communities with five separate cable systems. See § 76.5(a) of the cable television rules, Cable Television Report and Order, 36 FCC 2d 141, 214 (1972). Under these circumstances, our cable rules would normally demand that Stark provide each community with its own public, educational and governmental access channels. See § 76.251(a)(4)(5)(6) of the cable rules, 36 FCC 2d at 240–242.

Today, for reasons which remain rather obscure, the Federal Communications Commission waives these access requirements. Absent any tangible evidence, the majority agrees with Stark that strict adherence to our rules would impose an undue financial burden upon the system and that these communities, given their small populations, will not either need or demand three separate access channels apiece. As a result, the majority approves Stark's proposal to share the three requisite access channels among each of the five communities.

This is a dangerous precedent.

It is true that when we promulgated our cable television rules, we recognized that our access requirements might impose an onerous financial burden on cable systems operating in isolated communities in the nation's largest television markets. See para. 148, *Cable Television Report and Order*, 36 FCC 2d at 197. It is also true that we therefore suggested that in an "appropriate situation," our access rules might be relaxed. Apart from its utter failure to offer some standards by which to better define this term, the majority, by simply proclaiming that Stark has presented such an "appropriate situation," has operated in a total vacuum.

First, the majority makes absolutely no inquiry into Stark's financial capabilities. We simply have no idea of the capital outlays this system could make if so required.

Second, the majority makes no inquiry into the financial burdens that would be imposed upon Stark by compliance with our access rules.

It is possible, of course, that this system could easily supply each of these communities with three separate access channels to be used and viewed solely by the people in each community. Stark has a 20 channel capacity—presumably for each community—and it currently proposes to carry only eight broadcast signals. It is therefore quite possible—if not likely—that the systems could provide each community with these eight signals plus three access channels, leaving each community with nine open channels—to be utilized by Stark for future distant signal importation. If this is, indeed, the case, compliance with our rules could not impose much of a burden on the system. The point, of course, is that we know nothing of Stark's technical capacity.

Finally, though the majority adds, rather gratuitously, that these systems will have to provide the complete panoply of access channels envisioned by our rules if the communities involved should somehow illustrate a "sufficient demand," nowhere does the majority even hint as to how such demand is to be measured.[1]

Ironically, our present access rules demand very little from cable systems. Aside from requiring that such systems make three access channels available without cost—one for public use, one for educational use, and one for use by the local government—our rules ask only that these systems provide "the minimal equipment and facilities necessary for the production of programming." We do not demand—though I believe we should—that cable systems publicize the existence of these channels, that they actively solicit their use, or that they provide technical assistance and training to those who might seek to use these channels.[2]

In other words, while our access rules may well offer the public a potential for informative and educational services never realized by

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[1] Interestingly, two of the five communities to be served by these systems are unincorporated and, hence, do not have local franchising authorities. In the absence of such local governmental bodies, the majority has no way of knowing how or whether the people in these communities had any opportunity to scrutinize Stark's plan to provide cable facilities without strict compliance with our access rules. Under our rules, the FCC will not certify a new cable system unless that system has been franchised after a full public proceeding. See § 76.31(a)(1) of the Cable Television Rules, 36 FCC 2d at 219. Systems desirous of serving unincorporated communities which do not have franchising authority must include with their certificate of compliance applications "an acceptable alternative proposal for assuring that the substance of our rules, and specifically § 76.31, is complied with." See paragraph 116 of the *Cable Television Reconsideration of Report and Order*, 36 FCC 2d 326 at 366 (1972). The majority has not even seen Stark's alternative proposals—if, indeed such proposals do exist—with respect to its two unincorporated communities. It is therefore impossible for the majority to determine 1) whether such proposals are adequate to preserve the public's rights and 2) whether the public ever expressed its views on access at all.

[2] By contending that full compliance with our access requirements presents it with an insuperable financial burden, Stark County appears to suggest that it cannot afford to construct the "minimal" access facilities envisioned by our rules. Passing the question whether the majority can agree with Stark in the absence of any financial information (both as to Stark's income and as to the costs of construction), and passing the very serious problem of determining what our rules mean by "minimum" facilities, I believe that those communities which charge Stark a franchise fee should be required to reinvest the monies collected in access channel facilities. Three of the communities to be served by Stark intend to collect a small percentage of the systems' gross revenues. (1% the first year, 2% the second, and 3% thereafter.) It seems to me that, at least in cases where the cable system can prove its financial inability to comply with our access requirements, its community of service should be bound to use the franchise fees which our rules permit it to collect from the system for the purpose of effectuating complete access. If this result cannot be achieved under our current rules, then I suggest they be amended.

commercial broadcasting, see e.g. Johnson and Gerlach, The Coming Fight for Cable Guess, 2 *Yale Review of Law* and Social Action, 217 (1972), the burden of realizing that potential remains firmly on the public. That potential is obviously undermined, and the public's burden is substantially increased when this Commission, without careful scrutiny of the relevant facts, blithely permits a cable system to reduce the number of access channels which our rules—meager as they might be—demand. The public can only lose.

I dissent.

F.C.C. 73-85

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
HARRY D. STEPHENSON AND ROBERT E. STEPHENSON, LEXINGTON, N.C.	Docket No. 18385 File No. BP-17021
CHINA GROVE BROADCASTING CO., CHINA GROVE, N.C.	Docket No. 18386 File No. BP-17686
For Construction Permits	

ORDER

(Adopted January 23, 1973; Released January 30, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. Under consideration are: (1) applications for review of the Decision of the Review Board (FCC 72R-31, 33 FCC 2d 749) released February 8, 1972, denying the applications of Harry D. Stephenson and Robert E. Stephenson (BP-17021) and China Grove Broadcasting Company (BP-17686), filed March 29, 1972, by China Grove Broadcasting Company and the Stephensons, respectively; (2) a petition for leave to amend, filed March 29, 1972, by the Stephensons; (3) an opposition to China Grove's application for review, filed April 10, 1972, by the Stephensons; (4) an opposition to both applications for review, filed April 13, 1972, by the Chief, Broadcast Bureau; (5) an opposition to the petition for leave to amend, filed April 6, 1972, by the Chief, Broadcast Bureau; and (6) replies to the Bureau's oppositions, filed April 14, 1972, and April 18, 1972, respectively, by the Stephensons.

2. Although the Stephensons assert that their application should be granted on the basis of their tendered amendment, the time for filing such a pleading expired long before it was submitted here. Moreover, in spite of the Stephensons' contentions that good cause exists for acceptance of their amendment, we perceive no reason why the record in this case should be reopened at this stage of the proceeding to admit evidence which was readily available at the proper time and which was deemed crucial by the Stephensons only from the "highland of hindsight." *Cf.*, *Guinan* v. *FCC*, 111 U.S. App. D.C. 371, 297 F. 2d 782, 22 RR 2026, at 2030 (1961).

3. IT IS ORDERED, That the applications for review filed March 29, 1972, by China Grove Broadcasting Company and the Stephensons, respectively, and the petition for leave to amend, filed March 29, 1972, by the Stephensons, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-50

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Case and Desist Order to be Directed Against TELE-CEPTION OF WINCHESTER, INC., WINCHESTER, KY.	Docket No. 19358 File Nos. SR-12689-N, SR-116834

APPEARANCES

William P. Bernton, on behalf of Tele-Ception of Winchester, Inc. and *Abraham A. Leib* and *Stephen R. Ross*, on behalf of Chief, Cable Television Bureau, Federal Communications Commission.

DECISION

(Adopted January 26, 1973; Released January 31, 1973)

BY THE REVIEW BOARD: NELSON, PINCOCK, AND KESSLER.

1. The Review Board has before it an Initial Decision of Administrative Law Judge David I. Kraushaar in the above-captioned matter and exceptions thereto, filed by Tele-Ception of Winchester, Inc. The Presiding Judge found, based on stipulation of the parties, that Tele-Ception of Winchester, Inc. is carrying the signals of stations WLKY-TV and WXIX-TV in violation of Section 74.1105(a) of the Commission's Rules and Regulations. Accordingly, he entered an order directing Tele-Ception to cease and desist from operating in violation of Section 74.1105(a) of the Commission's Rules, and specifically from carrying the signals of television stations WLKY-TV and WXIX-TV on its cable television system in Winchester, Kentucky. None of the parties have requested oral argument in this matter and the Board has considered the record, the Initial Decision and the exceptions thereto and finds no basis for overturning the Presiding Judge's decision.

2. Tele-Ception concedes that its operation is in violation of the Commission's Rules; however it contends that Section 74.1105(a) is strictly a procedural rule and the failure of its predecessors to give the notice required does not warrant the discontinuance of what it regards to be a valuable service to the community. It contends more specifically that, since WLKY-TV and WXIX-TV are independent UHF television stations, each operating in a community where all of the VHF stations in that community are carried by Tele-Ception's cable television system, the public interest requires continuous carriage of those UHF signals. The Commission in comparable situations has consistently held that until the cable television system has complied with Section 74.1105(a), it will not consider the merits of the service being rendered. *Hampton Roads Cablevision Co.*, 30 FCC 2d 520 (1971).

Tele-Ception has advanced no argument, precedent or justification for our departure from this well established rule. All of its exceptions, which run to the merits of the services rendered, will therefore be denied and the Presiding Judge's Initial Decision is adopted as the Review Board Decision in this matter.

3. Accordingly, IT IS ORDERED, That the exceptions to Initial Decision, filed on April 19, 1972, by Tele-Ception of Winchester, Inc. ARE DENIED, and that, within two days, exclusive of Saturdays, Sundays and Holidays, if any, after the release of this Decision, Tele-Ception of Winchester, Inc. cease and desist from the operation of its community antenna television system at Winchester, Kentucky in violation of Section 74.1105(a) of the Commission's Rules and Regulations and specifically from carrying the signals of television broadcasting stations WLKY–TV and WXIX–TV on its cable television system in violation of that section of the Commission's Rules and Regulations.

FEDERAL COMMUNICATIONS COMMISSION,
DEE W. PINCOCK, *Member, Review Board.*

F.C.C. 72D-20

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Cease and Desist Order to be Directed Against TELE-CEPTION OF WINCHESTER, INC., WINCHESTER, KENTUCKY	Docket No. 19358 File Nos. SR-12689-N, SR-116834

APPEARANCES

On behalf of the Respondent Tele-Ception of Winchester, Inc., Mr. *William P. Bernton* (Mallyck & Bernton); on behalf of the intervenor WLEX, Inc., Messrs. *Mark S. Fowler* and *Vincent A. Pepper* (Smith & Pepper); and on behalf of the Cable Television Bureau, Federal Communications Commission, Messrs. *Abraham A. Leib* and *Stephen R. Ross*.

INITIAL DECISION OF HEARING EXAMINER DAVID I. KRAUSHAAR

(Issued March 15, 1972; Released March 20, 1972)

PRELIMINARY STATEMENT

1. By Order to Show Cause released December 1, 1971 (FCC 71-1198), 32 FCC 2d 610, directing the respondent to show cause why it should not be ordered to cease and desist from further violation of Rule 74.1105(a) on its cable television system at Winchester, Kentucky, the Commission initiated the present proceeding. The Order declared that "The public interest requires that the hearing process be conducted as expeditiously as possible" and directed the Examiner to issue his Initial Decision "as promptly as possible after the conclusion of the hearing". It named WLEX-TV, Inc. and Chief, Cable Television Bureau (FCC) as parties to the proceeding.

2. A prehearing conference was held on January 18, 1972 and the hearing was held, as originally scheduled, on February 7, 1972, when the record was closed. The respondent requested that it be allowed the full 20-day period prescribed by the Commission's rules (Rule 1.263) for preparing and filing proposed findings of fact and conclusions. Inasmuch as the Show Cause Order initiating the proceeding conferred no authority upon the Examiner to reduce this period of time, the period allowed by the rule was prescribed herein for such purpose during the February 7 hearing session (T. 31-33). (The parties either concurred or did not object.) March 9, 1972 was set as the deadline for filing any reply briefs. On February 28 the Examiner received a telephone call from counsel for the respondent to the effect

that the other parties had no objection to an extension until March 1, 1972 for the filing of proposed findings and March 13, 1972 for the filing of replies and requesting that the Examiner extend these deadlines accordingly. All pleadings have been filed by the requested extensions of the deadlines and the Examiner has considered them.[1]

Findings of Fact

3. The respondent, Tele-Ception of Winchester, Inc., is the owner and operator of a cable television system at Winchester, Kentucky, which provides approximately 2,700 subscribers with the following television broadcast signals: WLEX–TV (NBC), WKLE (Educ.), WBLG–TV (ABC), and WKYT–TV (CBS), Lexington; WLKY–TV (ABC), WHAS–TV (CBS), and WAVE–TV (NBC), Louisville; WLWT (NBC), WCPO–TV (CBS), WKRC–TV (ABC), and WXIX–TV, Cincinnati, Ohio. Both WXIX–TV and WLKY–TV are distant signals in Winchester. Station WXIX–TV is an independent (non-network) station in Cincinnati, Ohio and Station WLKY–TV is the Louisville, Kentucky affiliate of the ABC national television network. Both are UHF television stations.

4. Station WLKY–TV, *supra*, began operation on September 16, 1961. The signal of WLKY–TV was not carried by Tele-Ception of Winchester, Inc., prior to March 17, 1966.

5. Station WXIX–TV, *supra*, began operation during 1968.

6. Present Rule 74.1105(a) reads as follows (emphasis in quote supplied):

> (a) No CATV system shall commence operation in a community or commence supplying to its subscribers the signal of any television broadcast station carried beyond the Grade B contour of the station, unless the system has given prior notice of the proposed new service to the licensee or permittee of any television broadcast station within whose predicted Grade B contour the system operates or will operate, and to the licensee or permittee of any 100 watts or higher power translator station operating in the community of the system, and has furnished a copy of each such notification to the Federal Communications Commission, within sixty (60) days after obtaining a franchise or entering into a lease or other arrangement to use facilities; in any event, no CATV system shall commence such operations until thirty (30) days after notice has been given. *Such notice shall be given by existing systems which proposed to add new distant signals at least thirty (30) days prior to commencing service* and by systems which propose to extend lines into another community within sixty (60) days after obtaining a franchise or entering into a lease or other arrangement to use facilities or where no new local authorization or contractual arrangement is necessary, at least thirty (30) days prior to commencing service. Where it is proposed to extend the signal of any noncommercial educational television station beyond its Grade B contour into a community with an unoccupied reserved educational television channel assignment under § 73.606 of this chapter, the notice shall also be served upon the superintendents of schools in the community and county in which the system will operate and the local, area, and State educational television agencies, if any.

[1] The Bureau filed its proposed findings of fact and conclusions of law by the original deadline of February 28, 1972. Tele-Ception's counsel wrote a letter, dated March 13, 1972, to the Hearing Examiner, "in lieu of filing Reply Findings". The letter indicates that copies were sent to other counsel. The Examiner has considered the contents of the letter although he regards the procedure of its submission as irregular. When and if Tele-Ception decides to comply with the law it will be time enough to give ear to its pleas on the merits.

109–026—73——11

Paragraph (d) of the same section specifies that the rule does "not apply to any signals which were being supplied to subscribers in the community of the CATV system on March 17, 1966, unless it is proposed to exend lines into another community" ("Grandfather clause").

7. The above-prescribed notices under Rule 74.1105(a) respecting the respondent's intention to carry the signals of television broadcast stations WLKY–TV and WXIX–TV were not served by it upon WLEX–TV, Inc., the licensee of Station WLEX–TV, Lexington, Kentucky [2], the filer of the "Petition for an Order to Show Cause" that triggered the instant proceeding. See Commission's Show Cause Order, para. 1.

Conclusions

8. It has been established herein that Tele-Ception has carried the signals of Stations WXIX–TV and WLKY–TV in violation of the notice requirements prescribed in Rule 74.1105(a). Had proper notice been given, the intervenor herein, WLEX–TV, Inc. could have formally protested the cable company's proposal to carry these signals and invoked the stay provisions of Rule 74.1105(c), which prescribe, *inter alia*, that such "new service which is challenged . . . shall not be commenced until after the Commission's ruling on the petition or on the interlocutory question of temporary relief pending further procedures . . .". The Commission would then have been in a position to weigh the merits of such proposed service in an orderly manner so that a reasoned determination could be made whether the carriage of the distant signals of Stations WXIX–TV and WLKY–TV on the Tele-Ception cable system would be in the public interest. Having failed to 'come into court with clean hands', however, thereby depriving the Commission of a fair opportunity to rule upon the merits of the ultimate controversy in the orderly way prescribed by the rules, respondent Tele-Ception cannot now be permitted to reap any benefit from this violation by the continued carriage of the disputed signals. *Cf. Hampton Roads Cablevision Co.*, 30 FCC 2d 520, 522, 523 (1971).

9. During the hearing the Examiner asked the parties to submit briefs regarding the applicability to this proceeding of the recently issued Cable Television Rules which, by their terms, take effect March 31, 1972. See 37 Fed. Reg. 3252 (1972). As indicated by the Cable Television Bureau in an Appendix to its Proposed Findings, on and after the effective date of the newly adopted rules and regulations, and after removal of the WLKY–TV and WXIX–TV signals from its CATV system pursuant to the cease and desist order to be issued herein, Tele-Ception could submit an application for a so-called certificate of compliance to add an independent television broadcast signal. If Tele-Ception desired to carry the distant signals of Stations WXIX–TV or WLKY–TV, it would have to make a showing that such carriage would be consistent with the rules. Such applications would then be put on public notice, giving interested parties 30 days to file protests. See New Rules 76.11(a), 76.13(c), 76.15, 76.17 and 76.59(b)(1) and

[2] It may be officially noted that Winchester, Kentucky is within a 35-mile radius of Lexington, Kentucky.

76.59(b)(2). Thus, even under the newly adopted rules, if and when they become effective, orderly procedures are prescribed that cable systems will be expected to comply with. In the meantime, however, until such time as the newly adopted rules *actually* supersede the rules now in effect [3] Tele-Ception, and all others similarly situated, must comply with the notice provisions of Rule 74.1105(a). On balance, therefore, in the interest of enabling this Commission to carry out its statutory mandates, to the end that its reasonable, judicially sustained, rules and regulations can be effectively and impartially administered, an Order must issue herein directing Tele-Ception of Winchester promptly to cease and desist from its unlawful operation. *Hampton Roads Cablevision Co., supra*, 30 FCC 2d at 522 and 523 (para. 6–8), and cases therein cited.

Accordingly, IT IS ORDERED, That, unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of its rules and regulations within two (2) days (exclusive of Saturdays, Sundays, and holidays, if any) of the effective date of this Initial Decision, Tele-Ception of Winchester, Inc., *Cease and Desist* from the operation of its community antenna television system at Winchester, Kentucky in violation of Section 74.1105(a) of the Commission's rules and regulations, and specifically from carrying the signals of television broadcast Station WLKY–TV and WXIX–TV on its said cable television system in violation of such section of the Commission's rules and regulations.

FEDERAL COMMUNICATIONS COMMISSION,
DAVID I. KRAUSHAAR, *Hearing Examiner.*

[3] The newly adopted CATV rules are subject to the hazards of litigation and, consequently, their effectiveness may be delayed beyond March 31, 1972.

F.C.C. 73-53

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re TRI-CITIES CABLE CO., INC., HUGHES SPRINGS, TEX. For Certificate of Compliance	CAC-798 TX246

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released February 5, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. On June 30, 1972, Tri-Cities Cable Company, Inc. filed an application for certificate of compliance for a new cable television system at Hughes Springs, Texas. The proposed system is to carry the following signals:

KSLA-TV (CBS) Shreveport, Louisiana.
KTBS-TV (ABC) Shreveport, Louisiana.
KTAL-TV (NBC) Texarkana, Texas.
KLTV (ABC, NBC) Tyler, Texas.
KDTV (Ind.) Dallas, Texas.
KDFW-TV (CBS) Dallas, Texas.
WFAA-TV (ABC) Dallas, Texas.
WBAP-TV (NBC) Ft. Worth, Texas.
KTVT (Ind.) Ft. Worth, Texas.
KERA-TV (Educ.) Dallas, Texas.

This application is opposed by KTBS-TV, Inc., licensee of Station KTBS-TV, and KSLA-TV, Inc., licensee of Station KSLA-TV, and Tri-Cities has replied.

2. Hughes Springs is located outside all television markets and accordingly its proposed signal carriage is consistent with Section 76.57 of the Commission's Rules. In their oppositions KTBS and KSLA argue that Tri-Cities' franchise for Hughes Springs is inconsistent with Section 76.31 of the Rules in the following respects: (a) it does not state that the franchisee's legal, character, financial, technical and other qualifications, and the feasibility of its construction arrangements have been approved by the franchising authority as part of a full public proceeding affording due process, (b) it does not contain a construction timetable, (c) it does not specifically refer to maintaining a local business office to handle complaints, (d) its duration is 25 years, which exceeds the 15 year maximum, (e) the franchise fee of 2% of annual gross receipts within the corporate limits of the city

to be served plus 2% of the annual gross receipts outside of the corporate limits of the city to be served may cumulatively exceed the Commission's suggested 3% franchise fee and as such require a special showing. But no showing has been attempted.

3. We rule on these objections as follows: (a) Tri-Cities has supplied information to establish that the franchise was issued only after a public proceeding, (b) in its application, Tri-Cities has undertaken to comply with the construction schedule of Section 76.31(a)(2) of the Rules, (c) in its application Tri-Cities has undertaken to maintain a local office in compliance with Section 76.31(a)(5) of the Rules. (d) Tri-Cities states that it will return to the city at the end of 15 years for franchise renewal proceedings. We find this offer to be acceptable, and therefore proceed on the understanding that Tri-Cities will voluntarily seek franchise renewal by November 17, 1985, *LVO Cable of Shreveport-Bossier City*, FCC 72–954, —— FCC 2d ——; (e) The discrepancy in the franchise fee is not so great as to bar the franchise (granted November 17, 1970) from being approved as in "substantial compliance" within the meaning of paragraph 115. *Reconsideration of Cable Television Report and Order*, FCC 72–530 36 FCC 2d 326, 366, see *CATV of Rockford, Inc.*, FCC 72–1005, —— FCC 2d ——. In summary, our review of Tri-Cities' franchise for Hughes Springs persuades us that it is in substantial compliance with our rules and policies sufficient to warrant a grant until March 31, 1977.

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Application For Certification" filed August 21, 1972 by KTBS–TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Opposition to Application For Certification" filed August 21, 1972 by KSLA–TV, Inc, IS DENIED.

IT IS FURTHER ORDERED, That Tri-Cities Cable Company, INC.'s application for Hughes Springs, Texas (CAC–798) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–93

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re VILLAGE CATV, INC., HOT SPRINGS VILLAGE, ARK. For Certificate of Compliance	CAC–920 (AR080) CSR–197

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released January 31, 1973)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT.

1. On August 1, 1972, Village CATV, Inc., filed an "Application for Certificate of Compliance" (CAC–920) and a "Petition for Special Relief" (CSR–197) for a new cable television system at Hot Springs Village, Arkansas. The proposed system will operate with the following Television Broadcast Signals:

KETS (Educ.), Little Rock, Arkansas.
KARK–TV (NBC), Little Rock, Arkansas.
KATV (ABC), Little Rock, Arkansas.
KTHV (CBS), Little Rock, Arkansas.
KFSA–TV (ABC/CBS/NBC), Fort Smith, Arkansas.
KTVE (NBC), El Dorado, Arkansas.
KTAL–TV (NBC), Texarkana, Texas.

Both the application and petition are unopposed.

2. In its petition for special relief, Village CATV requests that Hot Springs Village be deemed a community wholly outside all major and smaller television markets. In support of its request Village submits the following data: Hot Springs Village is a new, privately owned, planned community of 450 persons. The eastern tip of this planned community (an area of 0.34 square miles, in which no persons reside) lies within 35 miles of the reference point of Little Rock, Arkansas, a major market (#50). The area in question, is not at this time owned outright by the developers of Hot Springs Village, who possess only an option to buy this parcel of land. The land will not be included in the community for some time to come; Hot Springs Village is being developed according to a planned pattern of growth, and the 0.34 square miles has not been developed in any way, and, in fact there are no access roads to this area at all.

3. In these circumstances, it seems appropriate to consider this a *de minimis* waiver situation, waive Section 76.5 of the Commission's Rules, and treat Hot Springs Village as lying wholly outside television markets. See *Diversified Communication Investors, Inc.*, FCC 72–963,

—— FCC 2d ——. Our grant will be of a limited duration (March 31, 1977), at which time we will review the facts and determine whether a continuation of the waiver is justified.

In view of the foregoing, the Commission finds that a grant of the above-captioned application and petition would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Application for Certificate of Compliance" (CAC–920), and the "Petition for Special Relief" (CSR–197) filed on August 1, 1972, by Village CATV, Inc., IS GRANTED to the extent indicated in paragraph 3 above, and an appropriate Certificate of Compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

39 F.C.C. 2d

F.C.C. 72-1126

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of THE WESTERN UNION TELEGRAPH CO., NEW YORK, N.Y. Consolidation of 22 Public Telegraph Offices Into Single Public Message Center	Docket No. 19267 File No. TD 17972

MEMORANDUM OPINION AND ORDER

(Adopted December 13, 1972; Released December 19, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS DISSENTING.

1. On November 3, 1972, Western Union International, Inc. (WUI) filed a Petition for Stay and a Petition for Reconsideration of our Decision in this proceeding. The Decision, released October 4, 1972, held that the public interest would be served by a partial grant of The Western Union Telegraph Company's (Western Union) application to consolidate 22 public branch offices in lower Manhattan into a single Public Message Center. Oppositions to each Petition have been filed by Western Union, and WUI has replied to the oppositions. Since the action we are taking herein dispenses with the Petition for Reconsideration, it will not be necessary to rule on the merits of the Petition for Stay, and it will accordingly be dismissed.

2. WUI argues again that the record should have been reopened so that certain findings of the New York State Public Service Commission (PSC) indicating alleged shortcomings in Western Union's service, could be added to the record.[1] This same point was argued in WUI's Petition to Reopen the Record. As stated in the Recommended Decision (footnote 18) of the Chief, Common Carrier Bureau, "WUI's allegations, even if true, would not alter the substance of our findings and conclusions herein." Other than WUI's assertion that there is "substantial danger that [Western Union] will not adhere to its commitments", WUI has not supported its request for reconsideration of our action denying its Petition to Reopen the Record.

3. WUI has stated that denial of its Motion for Oral Argument was inappropriate. In paragraph 4 of the Decision, we stated our belief "that the issues have been adequately explored in the hearings and on the pleadings and that no useful purpose would be served by oral argument." WUI has advanced no reasons for reversing that judgment.

[1] We note that, although the PSC was served with copies of all pleadings in this proceeding, it has not seen fit to support WUI in this request.

4. It is argued by WUI that a series of letters between Western Union and the Common Carrier Bureau's staff with reference to Western Union's tariff delivery standards constituted an attempt by Western Union to persuade the Bureau that a favorable ruling in this proceeding was a prerequisite for the improved New York City delivery standards sought by the Bureau. Although, as WUI pointed out, Western Union constantly referred to the need for implementation of the Public Message Center concept, the Bureau, in its letter of August 23, 1972, rejected Western Union's insistence on a favorable decision in this proceeding prior to improving such standards. Thus it is clear that the Commission's consideration of the issues in this proceeding has not been prejudiced by Western Union's references to the Public Message Center concept, and therefore WUI has no grounds for complaint.

5. WUI further argues that since one of the bases for the Commission's approval of the Public Message Center plan was to enable Western Union to eliminate the SS38 switching center with its attendant problems, and since according to a September 15, 1972, Western Union letter, the daily load being switched by the SS38 has dropped from 13,000 messages down to only 7,000 messages, then one of the main bases of the Decision has been undermined. The SS38 switching center was only one of several factors considered by the Commission in arriving at the decision.

6. Finally WUI objects to the Commission's general approval of the concept of Public Message Centers in New York City. However, the Commission stated that "the discontinuance of any additional branch offices must be preceded by an appropriate application from Western Union for Commission authorization which will be granted only upon a finding by the Commission that the telegraph needs of the public can be reasonably satisfied by a consolidation of branch office functions." (Recommended Decision, para. 6) Thus, although the general concept of Public Message Centers, based on the facts of record in this proceeding with respect to one particular geographic area, has been endorsed, it is clear that each application filed by Western Union for consolidation of public branch offices into Public Message Centers will be examined on an individual basis to insure that each consolidation is in the public interest.

7. In view of the foregoing, IT IS ORDERED, That WUI's Petition for Reconsideration is DENIED.

8. IT IS FURTHER ORDERED, That WUI's Petition for Stay is DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–111

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
W. M. E. D. ASSOCIATES, INC., NEWARK, N.J.	BP–19,083
FIDELITY VOICES, INC., NEWARK, N.J.	BP–19,081
GREATER NEWARK BROADCASTERS, INC., NEWARK, N.J.	BP–19,085
Request Construction Permits for Regular Authority To Operate the Facilities of WNJR, Newark, N.J. (1430 kHz, 5 kw DA–N, U)	

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 6, 1973)

BY THE COMMISSION:

1. The Commission has before it the above-captioned applications. These applications are three of nine applications which have been tendered, each requesting regular authority to operate the facilities of station WNJR, Newark, New Jersey. The three captioned applications have not been accepted because their acceptance or rejection depends on the Commission's disposition of the following pleadings which are now under consideration: a petition to dismiss the application of W. M. E. D. Associates, Inc. (WMED), filed by Sound Radio, Inc., a competing applicant for the WNJR facility; WMED's reply to the petition and Sound Radio's response; petitions to return the applications of Fidelity Voices, Inc.,[1] and Greater Newark Broadcasters, Inc., filed by Community Group for North Jersey Radio, Inc., another competing applicant for the WNJR frequency; the applicants' oppositions and Community Group's replies.

2. In urging the rejection of the WMED application, Sound Radio accuses WMED of "deliberately" declining to comply with a requirement of section III of FCC Form 301 by failing to submit a balance sheet, and of being "smugly unresponsive" to another requirement that applicants submit information as to working capital. The latter charge is based on a statement in one of WMED's exhibits to the effect that "Applicant is also negotiating for a working capital loan." In its responsive pleading, Sound Radio charges WMED with bad faith and cites WMED's failure to file copies of shareholders' subscription agreements, balance sheets of individual stockholders and net income

[1] The Fidelity Voices application was originally filed in the name of Charles A. Stanziale, Managing Trustee, Fidelity Voice Trustees. It has since been amended to reflect the incorporation of the applicant and a change in name to Fidelity Voices, Inc.

statements of individual shareholders. Sound Radio, in its responsive pleading, also asserts that the failure to file a balance sheet and the alleged failure to furnish information as to working capital, and presumably WMED's response to Sound Radio's charges, "present a question of first impression."

3. Sound Radio's assertion that the failure to meet all the requirements set forth in the Commission's application form presents a question of first impression is simply incorrect.[2] Examination of applications for broadcast authorizations filed with this agency discloses that there are omissions in a great majority of those applications. Because WMED has failed to file the prescribed supporting documents, the Commission is unable at this time to find that the applicant is financially qualified. Although the applicant has filed a corporate balance sheet, the application requires further amendment to include necessary documents before its financial qualifications can be assessed. The omissions, however, do not constitute any basis for summarily rejecting an otherwise substantially complete application. Sound Radio's petition to dismiss the WMED application will be denied.

4. Community Group argues that the applications of Fidelity Voices and Greater Newark are not substantially complete within the meaning of section 1.564 of the Commission's rules and should be returned. In the case of Fidelity Voices, Community Group points out that in the application as originally filed, the applicant failed to state the methods used by the applicant to ascertain the needs and interests of the public to be served, to describe the significant needs and interests of the public the applicant proposes to serve and to list typical and illustrative programs the applicant plans to broadcast. Community Group also cites Fidelity Voices' failure to file section VI, FCC Form 301 (equal employment opportunity program).

5. In opposition to Community Group's petition to return its application, Fidelity Voices not only responded to Community Group's arguments, but also amended its application extensively to include the originally omitted material, including a section VI. The Commission does not pass on the sufficiency of the applicant's showing, but the application is now substantially complete and will be accepted.

6. Community Group urges the return of the Greater Newark application because the applicant failed to submit data with respect to the city of Newark (community profile) and to indicate the anticipated time segments, duration and frequency of various programs required by questions and answers 9 and 29, respectively, of the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). Community Group also noted that Greater Newark has also failed to submit section VI of the application form.

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[2] Among the charges leveled at WMED by Sound Radio is the accusation that WMED has shown the availability of only $10,000 to meet its construction and operating costs. This charge ignores the fact that WMED has represented that it will acquire substantial funds from the sale of corporate stock. Although the applicant has not submitted the required supporting material, we will not assume that such funds are not available and that the applicant cannot, in the hearing or by amendment prior to hearing, substantiate the availability of these funds. Failure to provide such substantiation will, of course, preclude a finding ultimately that the applicant is financially qualified.

7. In response, Greater Newark argues that its application is complete and that it was prepared in accordance with the Commission's instructions on the application form as the applicant understands them. One of Greater Newark's arguments is somewhat surprising. It argues that the instructions do not call for the submission of section VI of the form. However, the form filed by Greater Newark and section 73.125(c) of our rules clearly indicate the requirement that an applicant for a construction permit must file section VI of the form as well as all other sections of the form. Greater Newark's argument that it understands that nondiscriminatory practices in employment are the subject of both federal and New Jersey State law does not excuse it from filing the required equal employment opportunity program.

8. The failure to file section VI with its application is a serious omission, and this omission precludes a finding that the application of Greater Newark is substantially complete. However, since Greater Newark attempts to excuse the omission by a legal argument, the Commission will accept the application subject to the condition that Greater Newark file, on section VI of FCC Form 301, an equal employment opportunity program within thirty (30) days of the date of the release of this Order. The section should be filed in triplicate as an amendment to Greater Newark's application, should be signed by an officer of the corporation, and meet all other requirements relating to amendments to applications. In the absence of such an amendment within the time specified, Greater Newark's application will be automatically dismissed.

9. Greater Newark's argument that its application is complete, notwithstanding the failure to include a community profile and to indicate the anticipated time segments, duration and frequency of programs proposed, seem to indicate that the applicant may be unaware of the Commission's requirements set forth in the *Primer on Ascertainment of Community Problems, supra.* It is very important that an applicant inform itself of all the Commission's requirements and supply the necessary data required by the application form and the Commission's rules. Greater Newark would be well advised to review the Commission's *Primer* and to revise its statement of program service and supporting documents accordingly. The Commission, however, does not find that the omissions in Greater Newark's statement of program service are such that the application must be held to be incomplete on this ground.

10. Although not material to the Commission's present determination, some comment on another misconception of Greater Newark appears appropriate. In commenting on its program-proposal, Greater Newark states that it is its understanding that each individual applicant will be expected to take the witness stand in the forthcoming hearing on the Newark applications and "carefully explain its proposal." It is generally recognized that, except in rare instances, testimony on program content is not ordinarily permitted in hearing proceedings. See *Policy Statement on Comparative Broadcast Hearing*, 1 FCC 2d 393, 5 RR 2d 1901 (1965). The Commission has no present intention of providing that evidence on program content will be received in the hearing proceeding on the Newark applications.

11. Since the Newark applications were tendered, the Commission has been advised that Fidelity Voices, Inc., and Greater Newark Broadcasters, Inc., have reached an understanding with two other Newark applicants, The Brown Broadcasting Corp. (File No. BP-19084) and Community Action Radio Enterprises (File No. BP-19082), whereby the four applicants will merge and compete for the Newark facility as a single applicant. The agreement also provides that any other applicant may participate in the merged entity on equal terms. In view of this understanding, it appears that some of the applications will be dismissed concurrently with the merger and that further amendments will be necessary in connection with the merger. Pending that event, the Commission will accept the three applications which have not heretofore been accepted, but withhold further action until receipt of the contemplated merger plan.

12. Accordingly, IT IS ORDERED, That the petition to dismiss the application of W. M. E. D. Associates, Inc., filed by Sound Radio, Inc., and the petitions to return the applications of Fidelity Voices, Inc., and Greater Newark Broadcasters, Inc., filed by Community Group for North Jersey Radio, Inc., ARE DENIED.

13. IT IS FURTHER ORDERED, That the applications of W. M. E. D. Associates, Inc., and Fidelity Voices, Inc., ARE ACCEPTED for filing.

14. IT IS FURTHER ORDERED, That the application of Greater Newark Broadcasters, Inc., IS ACCEPTED for filing subject to the condition that, within thirty (30) days of the release of this Order it shall amend its application to include its equal employment opportunity program on section VI of FCC Form 301 and that if the application is not amended as indicated, the application will be automatically dismissed.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R–53

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WHJB, INC., GREENSBURG, PA. For Construction Permit	Docket No. 18868 File No. BP–17962

APPEARANCES

Isadore G. Alk, on behalf of WHJB, Inc., and *Jay L. Witkin*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted January 29, 1973; Released February 2, 1973)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER CONCURRING WITH STATEMENT. BOARD MEMBER NELSON DISSENTING WITH STATEMENT.

1. This proceeding involves the application of WHJB, Inc. (WHJB),[1] licensee of standard broadcast Station WHJB, Greensburg, Pennsylvania, for an increase in daytime power from 1 kw directional to 5 kw directional. A petition to deny WHJB's application was filed by WTRA Broadcasting Company (WTRA), licensee of standard broadcast Station WTRA, Latrobe, Pennsylvania.[2] By Memorandum Opinion and Order, FCC 70–547, released May 27, 1970, the Commission designated the application for hearing on financial and *Suburban* issues, as well as the following Suburban Community issue (Issue (2)):

To determine whether the instant proposal will realistically provide a local transmission facility for its specific station location or for another larger community, in the light of all the relevant evidence, including, but not necessarily limited to, the showing with respect to:

(a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programming needs;

(b) The extent to which the needs of the specified station location are being met by existing aural broadcast stations;

(c) The extent to which the applicant's program proposal will meet the specific unsatisfied programming needs of its specified station location; and

(d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

On September 1, 1971, Administrative Law Judge Ernest Nash released an Initial Decision (FCC 71D–57) in which he concluded that

[1] On January 6, 1972, WHJB filed a petition to amend record *nunc pro tunc* or to reopen record to substitute as applicant in this proceeding WHJB Radio, a Limited Partnership, in lieu of WHJB, Inc. and a Statement concerning the same matter. Since no substantial change of beneficial interest or control is involved, the Board will reopen the record for the limited purpose of substituting WHJB Radio, a Limited Partnership, as the applicant in this proceeding.

[2] WTRA was made a party to the proceeding and submitted predesignation pleadings, but did not participate after filing a Notice of Appearance.

WHJB had met its burden of proof under all of the issues. He therefore recommended a grant of WHJB's application. The proceeding is now before the Review Board on exceptions filed by the applicant and the Broadcast Bureau. The Bureau, which urged denial of the application in its proposed findings and conclusions, excepts to the Presiding Judge's resolution of the Suburban Community issue. No exceptions were taken to the Presiding Judge's findings and conclusions on the financial and *Suburban* issues.[3] The Board has reviewed the Initial Decision in light of the Bureau's exceptions, the arguments of the parties[4] and our examination of the record. We agree with the Presiding Judge's resolution of the financial and *Suburban* issues. However, the Board is of the opinion that the Presiding Judge erred in his ultimate conclusion that WHJB rebutted the 307(b) presumption of service to Pittsburgh. Accordingly, we hold that, on this record and for the reasons hereinafter set forth, WHJB's application must be denied. While we disagree with the Presiding Judge's ultimate conclusion to grant WHJB's application, we adopt his findings and conclusions, except as modified in this Decision and in our rulings on the Exceptions as set forth in the Appendix attached hereto.

2. *Technical and Engineering Considerations.* WHJB, a Class III station operating unlimited time, is applying to increase its daytime power from 1 kw directional to 5 kw (the maximum power for its class) and to change its directional pattern. WHJB contends that the power increase is needed to overcome alleged "man-made noise" in Westmoreland County. No change is proposed in the WHJB nighttime operation.

3. The city of Greensburg,[5] seat of Westmoreland County, is located about 20 miles southeast of Pittsburgh (population 604,332) at the closest city limits. With WHJB's present daytime pattern, its 5 mv/m contour falls 4.5 miles southeast of the nearest city limit of Pittsburgh; operating as proposed, WHJB's 5 mv/m contour will completely encompass Pittsburgh and extend about 9.5 miles west of the city. Thus, 5 mv/m coverage of Pittsburgh will go from zero to 100%. It is the location of the 5 mv/m daytime contour and the population difference in the cities involved that is the basis for specification of the Suburban Community issue.[6] Here, the difference in population of the cities

[3] WHJB filed four "protective" exceptions to the Initial Decision. All of them concern the Suburban Community issue.

[4] Oral argument was held before a panel of the Review Board on July 11, 1972.

[5] Unless otherwise stated, all population data herein is based on 1960 U.S. Census figures. The populations of the Greater Greensburg Area (1960 U.S. Census and 1970 Advance Report) are as follows:

	1960	1970
Greensburg	17,383	15,870
South Greensburg	3,058	3,288
Southwest Greensburg	3,264	3,186
Hempfield Township	29,704	39,196
Total	53,409	61,540

[6] *Policy Statement on Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 FCC 2d 190, 6 RR 2d 1901 (1965), reconsideration denied 2 FCC 2d 866, 6 RR 2d 1908 (1966). Briefly, the *Policy Statement* provides that when an applicant's proposed 5 mv/m daytime contour would penetrate the geographic boundaries of any community having a population of over 50,000 persons and having at least twice the population of the applicant's community, a presumption will arise that the applicant realistically proposes to serve the larger community rather than his specified community. 2 FCC 2d at 193, 6 RR 2d at 1906.

involved greatly exceeds the basic figure utilized by the *Policy Statement*—twice the size of the applicant's specified community. Pittsburgh is more than thirty times the size of Greensburg. Also, under the 5 kw proposal, the major lobe of its directional array is directed away from Greensburg and towards Pittsburgh, whereas under the present 1 kw pattern, the major lobe is directed away from Pittsburgh. The present and proposed gain/loss figures are as follows:

	Population	Area
Currently receiving primary service	1,523,087	8,135
Proposed primary service	3,771,665	15,949
Gaining primary service	2,225,730	8,026
Losing primary service	7,152	212
Net Gain	2,248,578	7,814

WHJB's present 0.5 mv/m contour encompasses all of Westmoreland County and its present 2.0 mv/m contour encompasses all urban areas of the county with the exception of the communities of Monessen (population 18,424), North Belle Vernon (population 3,148) and West Newton (population 3,982). Therefore, of a total county population of 352,629, approximately 92.7% or 327,075 persons receive primary service from the present operation. The engineering contentions in dispute, in the Board's view, are: (1) the existence and intensity of man-made noise in Westmoreland County; and (2) whether the magnitude of the power increase requested by WHJB is necessary to overcome this alleged man-made noise.

4. *Man-made noise.* WHJB's consulting engineer testified that, "Westmoreland County is a manufacturing and industrial area where high signal levels are desirable to overcome man-made noise." However, we agree with the Presiding Judge that WHJB failed to submit "detailed evidence on the extent and location of such areas". In fact, no evidence, other than the spot field measurements discussed, *infra*, was presented as to the level of such interference. The applicant further alleged that reception of WHJB in areas of Westmoreland County that receive less than a 2 mv/m signal is "blanketed" by man-made noise from power lines. In support of this allegation, WHJB submitted measurements taken in Seward, New Florence, Monessen, North Belle Vernon and West Newton.[7] The measurements are of existing WHJB signal and of the noise level at chosen spots. No attempt was made to establish the WHJB signal by accepted standards. See Sections 73.153 and 73.186 of the Rules. WHJB concedes that the spot field intensity measurements are unacceptable for determining signal contours, but

[7] Seward and New Florence are approximately thirty miles east of Greensburg, and the other three larger towns are 12 to 18 miles southwest of Greensburg.

urges that the measurements submitted are acceptable for illustrating the noise level in the area.[8] The value of these measurements is, at best, questionable even though they are not being used for the purpose of locating a specific contour. For example, WHJB has submitted a city map of Monessen, but no maps of other areas; and no exhibits were submitted which indicate the location of the points measured in relation to the power lines said to exist in the areas, with the exception that at least two measurements were taken *under* power lines—a method likely to produce distortion of the measured signal. There is also no indication as to whether the locations at which the measurements were taken represent the average distance of residential homes from the power lines;[9] what percent of the county population is located in the vicinity of power lines; or under what weather conditions the measurements were taken. Moreover, there has been no attempt to document whether there has been an overall increase in the total miles of power lines throughout the county; if complaints about the reception of WHJB have increased during recent years;[10] and whether there is any evidence to connect the two phenomena. Finally, WHJB's engineer conceded that it is not merely the noise level which is preventing the residents of West Newton, Monessen and North Belle Vernon from receiving an adequate signal from WHJB,". . . but it is also the fact that the signal itself is not strong enough to comply with the Commission's Rules . . .". In other words, all three communities are outside the existing WHJB 2.0 mv/m contour, and thus do not receive the minimum signal required for service to the communities, each of which has a population of over 2,500.[11] Therefore, WHJB has not established the existence of a significant man-made noise level, which is a basic premise for its application.

5. *Magnitude of power increase requested.* The magnitude of the power increase requested here was of significant concern to the Commission in the designation Order;[12] and nothing has been presented at the hearing to warrant any lessening of that concern. WHJB continues to assert that it needs the increase to 5 kw power to overcome man-made noise. In an attempt to prove its need for this much power

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[8] The Bureau, in its Exception 8, cites four cases (*Texas Star Broadcasting Co.*, 5 RR 144 (1950); *Manistee Radio Corp.*, 5 RR 302 (1950); *Lemoyne College*, 6 RR 1251 (1951); and *Suffolk Broadcasting Corp.*, 6 RR 457 (1951)) for the proposition that spot measurements cannot be accepted for any purpose. WHJB in its Reply to Exceptions, attempts to show that the cases do not support such an inflexible proposition. The Board does not consider it necessary to decide which of these interpretations is the more accurate statement of the law in the area because of its finding, *infra*, that the spot measurements themselves are inadequate in the present case.

[9] At one point WHJB's engineer testified that his measurements were taken about the same distances from the power lines as the houses in the area; however, since this testimony makes reference to an unidentified map, it is impossible to discover exactly which areas he is discussing.

[10] WHJB also offered two letters to support its allegations of interference to its signal from power lines. One, from the West Penn Power Company, indicates a *decrease* in radio-TV interference complaints to the Power Company from 1965–1969; gives no indication as to what radio or TV station was complained about; and does not identify or give the location of the complainant. The other letter was not received in evidence.

[11] Sections 73.182 (f) and (g) of the Commission's Rules provide that a community of 2,500 population requires a signal of 2.0 mv/m to provide primary service. *Bill Garrett Broadcasting Corp.*, 13 FCC 2d 7, 13 RR 2d 163 (1968).

[12] The Commission stated in the designation Order:

". . . since the proposed power appears to be greatly in excess of that needed to provide adequate coverage of the specified community and its immediate environs, we find that the applicant has failed to rebut the aforementioned presumption [of service to the larger community]."

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it submitted the deficient noise level measurements, discussed above, plus spot field intensity (signal strength) measurements of WHJB's signal at the same 42 points. At each measuring point the field intensity measurement taken on WHJB and the noise intensity measurement were compared to establish a signal-to-noise ratio. WHJB submitted exhibits which set forth its alleged signal-to-noise ratio with the present and proposed signals. In his testimony, WHJB's engineer stated that in his opinion a ratio of 30 to 1 or greater is necessary in order to have a listenable signal, but this signal-to-noise ratio is unsupported by scientific data or other opinions. WHJB appears to rely solely on the expertise of its engineer in the field of man-made noise; however, the engineer himself conceded that the choice of this particular ratio was subjective and that it arose from his listening to the WHJB signal in the county when he took the measurements in question.

6. The Board cannot accept the suggested 30 to 1 ratio. There is a lack of valid data supporting the choice of ratio. Moreover, although no standards have been established for determining man made electric-noise,[13] the Commission's Rules do suggest a method for determining interference from such noise.[14] The applicant has not established by acceptable evidence that this method is faulty. In sum, WHJB has failed to prove another major allegation in support of its requested power increase.

7. Moreover, even if we accept, for the sake of argument WHJB's suggestion of a 30 to 1 ratio, WHJB's alleged need for 5 kw of power is still unconvincing. For example, WHJB insists that its sole reason for requesting a power increase is to provide better service to Westmoreland County. However, it concedes that the only community in the county not receiving adequate service are Seward (population, 754), New Florence (958), Monessen (18,424), West Newton (3,982) and North Belle Vernon (3,148). This represents a total population of 27,266 or 7.3% of the county population. According to the signal-to-noise measurements taken at 42 locations in and around these towns and computed by WHJB, at present eight locations have a signal-to-noise ratio of 30 to 1 or better, whereas under the 5 kw proposal, twenty points will have such a ratio. Thus, even under WHJB's own proposed standard, only 12 additional locations (or 28.5%) would attain the 30 to 1 signal-to-noise ratio which WHJB considers necessary for adequate service. WHJB's engineer admitted that, even with the requested power increase, the entire projected gain area in the county will not, in fact, receive primary service because of shadowing of the signal due to the rough terrain. In effect, then, WHJB is asking for a 500% power increase to improve service to a relatively small *undeter-*

[13] *Manistee Radio Corp., supra* at 306.

[14] See reference note to Section 73.182(f) of the Rules:

NOTE.—Standards have not been established for interference from atmospherics or manmade electric noise as no uniform method of measuring noise or static has been established. In any individual case objectionable interference from any source except other broadcast signals, may be determined by comparing the actual noise interference produced during reception of a desired broadcast signal to the degree of interference that would be caused by another broadcast signal within 20 c/s of the desired signal and having a carrier ratio of 20 to 1 with both signals modulated 100 percent on peaks of usual programs. Standards of noise measurements and interference ratio for noise are now being studied.

mined number of persons in the county. In addition, WHJB's engineer testified that he was never specifically instructed to increase the signal intensity in the direction of Pittsburgh; however, only two potential operations were analyzed in WHJB's alleged attempt to improve service to Westmoreland County. A 1 kw non-directional operation was found unsatisfactory because of alleged interference with a station in Beckley, West Virginia, and after that WHJB's engineer suggested the present 5 kw proposal.

8. Finally, on cross-examination, the engineer admitted that it is possible to redesign WHJB's present radiation pattern so that a 2.0 mv/m signal can be rendered to all of Westmoreland County, employing a power of 1 kw. This statement by WHJB's engineer implies that WHJB does not need its requested power increase in order to better serve its home county. Moreover, Melvin Goldberg, president of WHJB, testified that he never asked the engineer to attempt to remedy WHJB's signal problems at its present power. In view of all the foregoing and the fact that the applicant's engineer has testified that a 2.0 mv/m signal (primary service to the areas in question) can be obtained without a power increase, it is impossible for the Board to find that a power increase is necessary to improve service to Westmoreland County.

9. *Subissues.* In our opinion, WHJB's showing under the specific subissues does not overcome the presumption that the applicant is in reality attempting to serve Pittsburgh.[15] Very little substantive evidence was offered by WHJB; in fact, most of the exhibits and testimony offered to rebut the presumption consisted of unsupported generalizations and conclusions. Significantly, WHJB states that it is relying on the principles enunciated in *Naugatuck Valley Service, Inc.*, 8 FCC 2d 755, 10 RR 2d 737 (1967), affirmed *sub nom. Northeast Broadcasting, Inc.* v. *FCC*, 130 U.S. App. D.C. 278, 400 F. 2d 749, 13 RR 2d 2102 (1968), to support its requested power increase. However, a comparison of the facts in *Naugatuck* with WHJB's evidentiary showing clearly demonstrates that WHJB failed to meet its burden

[15] At a prehearing conference held on July 8, 1970, WHJB's counsel indicated he felt that subissue (b) is inapplicable to a case where a power increase is requested as opposed to a case involving an application for a new station; and at the oral argument before the Board WHJB's counsel indicated he felt there was a general lack of clarity about the issues. However, WHJB, although stating that it felt some ambiguity existed in the issues as framed, made the decision on the record at the prehearing conference to proceed at its peril rather than ask the Administrative Law Judge for clarification or the Review Board for modification and/or deletion of the issues. Therefore, any argument by the applicant on the ambiguity of the issues has been resolved by the applicant's own choice of a course of action. In this regard, it is noted that the United States Court of Appeals, in dictum, in *Northern Indiana Broadcasters, Inc.*, v. *FCC*, 148 U.S. App. D.C. 327, 459 F. 2d 1351, 23 RR 2d 2113 (1972), urged the Commission to clarify its standards for implementing the *Suburban Community Policy Statement*. In our view, the *Northern Indiana* case is clearly distinguishable from the instant one. In *Northern Indiana*, the Court appeared to be concerned with the Commission's standards in close cases, since the Court emphasized that the Commission could have decided the case the other way with no "violent intellectual wrench". In the present case, it would take a *substantial* "intellectual wrench" to decide this case the other way. As discussed, *supra*, WHJB has completely failed to substantiate its alleged reasons for needing the power increase, and as shown, *infra*, nothing in its showing on the specific Suburban Community subissues overcomes the presumption that WHJB is attempting to become a substandard Pittsburgh station.

of proof.[16] In both cases (*Naugatuck* and the instant case), the applicants were existing stations requesting a power increase, with the *Naugatuck* applicant going from a daytime only to a full-time operation. The engineering factors in *Naugatuck*, however, made the applicant's burden on the subissues substantially less than WHJB's.[17] For example, in *Naugatuck*, the applicant's primary service (daytime) to the larger city went from 90.2 to 100 percent of the population, a minimal increase; while in the present case WHJB's 2 mv/m coverage of Pittsburgh would go from 15 to 100 percent and its 5 mv/m coverage from zero to 100 percent, a significant change in the coverage pattern. Moreover, unlike here, the *Naugatuck* applicant made a detailed, specific and convincing showing, not only that the proposed station would continue to serve ascertained needs, but that it would expand its service so as to more comprehensively meet those needs, and serve unsatisfied needs which it was previously unable to meet because of its daytime only hours of operation. Finally, in addition to showing that the proposed operation would not rely any more heavily for revenues on the larger city than the existing operation, the *Naugatuck* applicant established that its proposal would provide service to white and gray areas—"strong public interest factors", which weigh "heavily" in favor of a grant.

10. As to the specific showing under the Suburban Community issue, WHJB has demonstrated and the Administrative Law Judge has found that Greensburg is neither a "suburb" nor "bedroom" community of Pittsburgh. The Judge devotes over 21 pages of the Initial Decision (paragraphs 28–79) to Greensburg's distinctiveness and to WHJB's programming for the community. The Board accepts the fact that Greensburg is a separate community; however, the Board is unable to agree with the Administrative Law Judge that the extensive evidence concerning the characteristics of Greensburg and Westmoreland County is sufficient to satisfy the applicant's heavy burden under subissue (a). The Commission, in *Monroeville Broadcasting Company*, 12 FCC 2d 359, 12 RR 2d 946 (1968),[18] held that it places little value on a showing in a 307(b) Suburban Community case that the specified community is a "distinct" community with specific needs and interests ". . . since virtually all suburban communities have their own political,

[16] The other two cases cited by WHJB at page 18 of its reply brief to support a grant of its application are also wholly inapposite. The cases (*Jersey Cape Broadcast Corp.* (*WCMC*), 3 FCC 2d 681, 7 RR 2d 540 (1966); and *Major Market Stations, Inc.* (*KREL*), 8 FCC 2d 13, 9 RR 2d 1368 (1967)), are Memorandum Opinions and Orders where it was determined that the 307(b) presumption was successfully rebutted by the respective applicant's pleadings. In this case, by contrast, the Commission determined that serious Suburban Community questions were raised by WHJB's application and that WHJB's pre-designation pleadings did not rebut the 307(b) presumption. In addition, the facts in those cases are so vastly different from this case that their citation is totally inappropriate. For example, in *Jersey Cape*, the applicant did not propose a directional operation (as does WHJB) and the coverage of the larger community was due *solely* to "the existence of a salt water path between [the specified community] and [the larger community]". 2 FCC 2d at 944, 7 RR 2d at 543. Here, WHJB's proposed 100% 5 mv/m coverage of Pittsburgh is not due to natural conductivity, but is the direct result of a high-powered directional antenna array chosen by the applicant.

[17] It is well established that "the engineering characteristics of a particular proposal affect the quantum of proof necessary to satisfy the standard as it is applied in a given situation . . ." *Lebanon Valley Radio, Inc.*, 35 FCC 2d 243, 24 RR 2d 586 (1972). See also *Harry D. Stephenson and Robert E. Stephenson*, 33 FCC 2d 749, 23 RR 2d 760 (1972); *Kittyhawk Broadcasting Corp.*, 20 FCC 2d 1011, 18 RR 2d 125 (1970), review denied FCC 70–891, released August 26, 1970.

[18] Affirmed *sub nom. Miners Broadcasting Co.* v. *FCC*, 15 RR 2d 2080 (D.C. cir. 1969).

civic, and social institutions and since many of them have a substantial population and an economic vitality independent from the central city." 12 FCC 2d at 360, 12 RR 2d at 948. See also *Naugatuck Valley Service, Inc., supra.* There are also numerous existing precedents which clearly indicate that more is required of an applicant in a 307(b) Suburban Community case than a simple recitation of the distinctive facts about its specified community. Subissue (a) requires a comparison of the two communities involved (*i.e.*, the specified community and the presumed community), including a discussion of the different characteristics of each community and the distinct programming needs of each which result from the differences established. See *Lebanon Valley Radio, Inc., supra.* See also *Monroeville Broadcasting Company, supra; Tri-State Broadcasting Co., Inc.*, (*KUPD*), 19 FCC 2d 1042, 17 RR 2d 689 (1969), review denied FCC 70–14, released February 13, 1970. In *Tri-State*, an applicant for a power increase for a station in Tempe, Arizona (pop. 24,897) unsuccessfully attempted to rebut the presumption of service to nearby Phoenix (pop. 439,170). In upholding the Presiding Judge's denial of the Tempe application, the Board stated that: ". . . the applicant made no meaningful effort to compare the demographic characteristics of Tempe and Phoenix, or to show that these differing characteristics, if any, translate into separate and distinct program needs as required [by the *Policy Statement*] . . ." 19 FCC 2d at 1043, 17 RR 2d at 691. While the Board agrees with WHJB that Tempe was clearly a "bedroom community" of Phoenix whereas Greensburg is not a "bedroom community" of Pittsburgh, we do not believe that this distinction eliminates the need for a comparison of the communities involved as required by the *Policy Statement.*

11. Again, in the *Monroeville* case, the required showing under subissue 2(a) was illustrated even more clearly. A station in Ambridge, Pennsylvania (part of the Pittsburgh Urbanized Area), operating daytime only, with an antenna directionalized away from Pittsburgh sought a change in operation to include a power increase and an antenna directionalized *toward* Pittsburgh. The proposed 5 mv/m contour would have penetrated three miles into Pittsburgh, covering 13.8 percent of the city's population. (At the time of the application the station's 5 mv/m contour did not penetrate Pittsburgh.) In denying the requested power increase, the Commission emphasized the following:

> If WMBA is to rebut the presumption and demonstrate that it is not a Pittsburgh station, it must show the extent to which the specified station locations have needs that are separate and distinct from those of the presumed community served, pursuant to issue (a)(1). WMBA's showing on this point is insufficient. It made no attempt to show how the needs of Ambridge are separate and distinct from those of Pittsburgh. Perhaps they are, but WMBA did not produce the evidence. On Aliquippa, WMBA has shown that the community has a different educational level from Pittsburgh's, a lower percentage of white-collar jobs, and a higher percentage of residents of foreign birth. However, it made no effort to translate these differences into needs. It made no surveys, and it supplied no meaningful affidavits, nor did it offer exhibits describing any alleged (a)(1) separate and distinct needs from the "presumed" community served (Pittsburgh). [12 FCC 2d at 363, 12 RR 2d at 951.]

The analogy to the present case is unmistakable. The above excerpt, which even involved the same presumed community served as in the present case, provided an unequivocal caveat to WHJB that to carry its burden on this issue it had to *translate* differences in the communities into programming needs. It simply failed to do so.[19] WHJB has presented no demographic showing or other material to indicate the characteristics of Pittsburgh. In an ill-disguised and belated effort to remedy this defect (after denying that there is a defect), WHJB, in its reply brief, requests the Board to take official notice of census data on some of the demographic characteristics of Pittsburgh and Greensburg. The data is limited to the racial composition of Pittsburgh, Greensburg and Westmoreland County, and the percentage of Greensburg and Pittsburgh workers employed in their home counties. This is clearly an improper attempt by WHJB to remedy a record evidentiary defect in its case and will not be acccepted by the Board. *Cf Long Island Paging*, 32 FCC 2d 235 (1971), reconsideration denied 34 FCC 2d 216 (1972). Further, WHJB's argument that a favorable resolution of the *Suburban* issue also satisfies its burden under subissue 2(a) is unsound; the *Primer on Ascertainment of Community Problems by Broadcast applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971), does not require the same type of demographic data as does a 307(b) Suburban Community case. The *Suburban* issue speaks in terms of ascertaining the needs and interests of the community of license and proposed service area, while subissue 2(a) demands a showing of "separate and distinct programming needs", which inherently requires a comparison of the needs of the community of license and the larger community (in this case, Pittsburgh). *Lebanon Valley Radio, Inc., supra.* The difference between the two issues is apparent and, in the Board's view, quite significant.[20] Therefore, the Review Board has no choice but to find that WHJB has failed to carry its burden on subissue 2(a).

12. There appears to be no dispute concerning the amount and type of service provided to the Greensburg area.[21] According to paragraph

[19] Again, WHJB's reliance on *Naugatuck* to support a grant of its application is misplaced. On this same issue, the applicant in that case produced four witnesses prominent in the smaller community who detailed specific school, industrial, political, civic and religious needs unique to the community of Naugatuck and indicated how these needs would be fulfilled by the station's programming. In contrast, WHJB's showing consisted primarily of evidence from *its president* illustrating that Greensburg is a distinct community and a recitation of its *present* programming.

[20] It is noted that WHJB, in its reply brief, cites the Review Board's Memorandum Opinion and Order in *Creek County Broadcasting Co.*, 31 FCC 2d 462, 22 RR 2d 891 (1971), to support its allegation that it has carried its burden on subissue 2(a). *Creek County* is inapposite. After noting that one of the applicants had "submitted considerable data attesting to the economic, political, educational and commercial independence" of the specified community, we declined to add the requested 307(b) Suburban Community issue against that particular applicant because: ". . . the technical aspects of [respondent's] proposal indicate a clear intention to direct his service to his specified community, and not to [the] adjacent [larger community]." Thus, it is impossible to compare the cases since it is clear that the 307(b) presumption of service to the larger community in *Creek County* was very weak because of engineering factors; while in the present case, the 307(b) presumption is exceptionally strong because of engineering factors. Moreover, a 307(b) Suburban Community issue was *added* against another of the applicants in *Creek County* because of engineering factors similar to WHJB's situation, *i.e.*, proposed high power and a directionalized antenna system serving more than fifty percent of the larger community. See *Creek County, supra*, 31 FCC 2d at 472, 22 RR 2d at 904. Therefore, *Creek County* is not precedent for a grant of WHJB's application.

[21] During the hearing, counsel for the Broadcast Bureau repeatedly requested WHJB's counsel to furnish a map depicting the contours of other broadcast stations providing service to the area. (As a term of art, this type of map, which is commonly used in proceedings such as this, is referred to as a "spaghetti map.") WHJB's counsel never complied with this request, and as a result, there is no clear showing of other services

21 of the Initial Decision, to which no exception has been taken, ten standard broadcast stations, including WHJB, serve Greensburg with a signal intensity of 2.0 mv/m or greater, daytime; and thirteen FM broadcast stations, including WAKU–FM, WHJB's sister station, serve Greensburg with a signal intensity of 1.0 mv/m or greater. A total of six of these AM and FM broadcast stations are located in Westmoreland County. Written interrogatories were sent to those stations, with the exception of WHJB and its sister Station WAKU–FM, which, according to WHJB, "serve all or a substantial portion of Greensburg." No attempt was made, however, to ascertain the extent to which any of these stations were serving the needs of Westmoreland County outside of Greensburg. Of the nineteen stations contacted, twelve replied. The replies indicate, as the Administrative Law Judge found at paragraph 67 of the Initial Decision, that none of these stations directs more than a minimal amount of programming to Greensburg. On the average, news from Greensburg is broadcast only when it is of general interest and the remainder of Greensburg-related programming consists of a few public service announcements. In contrast, WHJB is the only fulltime standard broadcast station in Westmoreland County; its present programming illustrates an emphasis on local news (12 local newscasts and headlines daily) and use of the station as an outlet for local religious, political, social and educational programming. The focus appears to be on Greensburg and the surrounding area of Westmoreland County.

13. The Administrative Law Judge, the Bureau and the applicant agree that WHJB, as presently operating, is adequately meeting the needs of Greensburg—the specified station location, and the Board finds no reason to disagree. However, subissue (c) demands a showing of the extent to which the proposal meets the *unsatisfied* needs of the specified community. And, since the applicant does not intend to substantially change its existing programming, it is clear that Greensburg will not benefit from a grant of the application. Despite the foregoing, the applicant urges that it has met its burden under subissue (c), because it has conducted a comprehensive survey of the gain area. However, the Board is of the view that the applicant has not shown that it will meet unsatisfied needs in the gain area.

14. Westmoreland County has a total of six aural broadcast services *originating* in the county. Although there is no one individual station that completely covers the county, numerous Pittsburgh and other outside stations provide additional service to the county. WHJB has not demonstrated a lack of service to the county. In the applicant's survey of the 2.0 mv/m gain area in the county, WHJB reports that those interviewed in Monessen, North Belle Vernon, and West Newton "felt the radio stations serving Westmoreland County were doing a good job". However, WHJB states that the need for a county-wide station serving the entire Westmoreland County area was mentioned

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available to the alleged "noise" areas or the gain and loss areas. At oral argument, WHJB's counsel argued that the "cost of submitting such a map was unnecessary". The Board regards this argument as untenable in light of the profitability of WHJB and the fact that, by requesting a power increase, it brought upon itself the many costs of a lengthy administrative proceeding. WHJB's refusal to furnish this map leaves numerous gaps in the record for which the applicant must take full responsibility.

since the only stations that now cover the entire county are primarily Pittsburgh stations. According to WHJB, "the civic and political leaders of West Newton generally stated that they are in a fringe reception area and are *not being served by any radio station.*" (Emphasis added.) Although the Presiding Judge accepted this statement, it is in conflict with the record testimony of WHJB's engineering witness that the 2.0 mv/m gain area in Westmoreland County is now receiving 2.0 mv/m reception from five or *more* aural broadcast services. Since clear proof of service to those areas could have been provided by WHJB if it had produced the "spaghetti map" which was repeatedly requested by the Bureau at hearing (see note 21, *supra*), the Board cannot accept (as the Presiding Judge did) general statements of lack of service which are contradicted elsewhere in the record.[22] Finally, as noted previously, the applicant's interrogatories did not seek to determine what, if any, needs of Westmoreland County (outside of Greensburg) are being met by existing stations; in the absence of such information, the extent to which the applicant would meet unsatisfied needs in that area simply cannot be ascertained.[23]

15. WHJB's submissions on its advertising revenues show clearly that the station is profitable and that total advertising revenues could support the requested power increase. However, the breakdown in revenues provided by the applicant does not show that the proposed operation could be supported by revenues from the "specified station location" as required by the Suburban Community issue. Greensburg, of course, is the specified station location. It is not *Greater* Greensburg, nor is it Westmoreland County. See *Risner Broadcasting, supra.* Contrary to the Broadcast Bureau's contention, WHJB did report revenues from Pittsburgh; it did not, however, give the breakdown for Greensburg. WHJB lists 30% ($102,000) of its 1970 estimated advertising revenues as coming from "Greater Greensburg", which, according to WHJB's Exhibit 2 is composed of Greensburg (population 17,383), South Greensburg (3,058), Southwest Greensburg (3,264) and Hempfield Township (29,704). Thus, by population, at least, Greensburg itself represents only one-third of this total area. No breakdown of revenues is given for the individual communities. WHJB also lists 37% ($125,800) of "local" advertising revenues under "other areas in Westmoreland County". Without a further breakdown it is impossible to know if these revenues, which compose the largest single item in WHJB's income, are coming primarily from the Pittsburgh edge of the county or elsewhere. Equally obscure is the 9% ($30,600) listed from "other areas outside of Westmoreland County".

[22] Compare *Naugatuck*, where the applicant produced substantive evidence to show that it was unable to meet certain needs of its community which it described specifically, because of its daytime only operation. In this case, WHJB offered only general statements on the need for a "county-wide" station.

[23] Since no unsatisfied needs have been shown under subissue 2(c), it is unnecessary to comment extensively on the program proposal of WHJB. It is noted that very little change is contemplated in its programming relating to the Westmoreland County gain area, aside from expanded county news coverage. And even this allegedly "expanded" coverage is questionable since WHJB's Exhibit 9, p. 51, states:

"Applicant proposes to obtain news from these areas in proposed gain area by telephone calls to police stations, fire departments and hospitals, as well as utilizing 'news stringers' and our Associated Press wire service."

Since this appears to be the method by which WHJB states that it serves the county now, the Board concludes that no substantial programming changes are planned for the county.

The remaining 24% of revenues is listed as national and regional with 15% listed as coming from Pittsburgh. Based on these very generalized figures, it is difficult to determine the origin of WHJB's advertising revenues to make a finding under subissue 2(d). Therefore, without a more precise breakdown of Greensburg revenues, the Board concludes that WHJB's burden on subissue 2(d) has not been met.

16. *Realistic Local Transmission for Specified Station Location.* The Suburban Community issue is not limited solely to the subissues discussed above, but includes all relevant evidence "to determine whether the instant proposal will realistically provide a local transmission facility for its specified station location or for another larger community." [24] Therefore, the Board must consider other important factors relating to WHJB's application.

17. *Gain and Loss Figures.* As noted in the technical and engineering section of this Decision, *supra*, WHJB's radiation will shift from a pattern whose major lobe is southeast, away from Pittsburgh to one which radiates excess power to the northwest, toward Pittsburgh. As a result, more than 7,000 persons in 212 square miles in Maryland and Virginia will *lose* primary service. WHJB did not provide information on the number of broadcast services presently received in the loss area. Therefore, WHJB can give no assurance that the loss areas will be adequately served after its primary service is withdrawn.[25] In any event, loss of broadcast service to anyone is *prima facie* inconsistent with the mandate of Section 307(b), and, WHJB has presented no countervailing public interest considerations to justify this loss of service.[26]

18. The present 0.5 mv/m contour of WHJB covers all of Westmoreland County and the 2.0 mv/m contour covers all of the urban areas within the county except Monessen (18,424), North Belle Vernon (3,148) and West Newton (3,982). The proposed 5 kw service would place a 2.0 mv/m signal over the entire county. At present, 327,075 persons or 92.7% of a total county population of 352,629 receive primary service from WHJB. At best, the new proposal would provide primary service to approximately 25,000 or 7.3% more of the residents of Westmoreland County. Thus, in order to obtain increased service to a maximum of 25,000 people (since WHJB insists its primary reason for requesting a power increase is to improve service to the county), the new service will result in additional primary service to over 2,200,000 people outside the county—almost 100 times the increase in the county.

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[24] This is the standard clause used by the Commission when designating a 307(b) Suburban Community issue. See, *e.g., Tri-State Broadcasting Co., Inc. (KUPD), supra; Naugatuck Valley Service, Inc., supra; Creek County Broadcasting Co., supra.*

[25] Compare *Naugatuck Valley Service, Inc., supra*, where the applicant (also an existing licensee) proposed to *cure* white and grey areas, not to *create* them, as WHJB might do.

[26] "[A]ny deprivation or degradation of [broadcast] service to any group of people is *prima facie* not in the public interest and can be justified only by countervailing public interest factors sufficient to offset that deprivation or degradation." *Central Coast Television (KCOY-TV)*, 14 FCC 2d 985, 986, 14 RR 2d 575, 579 (1968), review denied FCC 69-614, June 4, 1969, reconsideration denied 16 RR 2d 960, appeal dismissed U.S. App. D.C. Case No. 23,422, August 19, 1971, see *Television Corporation of Michigan* v. *FCC*, 111 U.S. App. D.C. 101, 294 F. 2d 730, 21 RR 2107 (1961). This principle applies with equal force to standard broadcast stations. *Cf. Fred Kayebier*, 20 RR 2d 844 (1970).

19. More important, however, the population composition of WHJB's primary service area will change radically. At present, residents of Westmoreland County compose over 20% of WHJB's primary service area and the Greensburg area appears to be the largest population center. With WHJB operating as proposed, Westmoreland County residents will account for less than one-tenth of WHJB's primary service area and the largest population center will be Pittsburgh. It was just such a situation that the Commission had in mind when it said in the *Policy Statement*, *supra:*

> Our experience compels us to conclude that as their power and coverage are increased to serve larger numbers of persons, stations in metropolitan areas often tend to seek out national and regional advertisers and to identify themselves with the entire metropolitan area rather than with the particular needs of their specified communities. [2 FCC 2d at 192, 6 RR 2d at 1905–06]

WHJB's intention to attract a Pittsburgh audience is already quite clear and the concern the Commission expressed in the *Policy Statement* is fully justified in the present situation.

20. The Board does not find fault with the Administrative Law Judge's conclusion that WHJB is currently providing a local transmission service for Greensburg. Since Greensburg is the major population, retail, commercial, industrial, political, and cultural center of WHJB's primary service area, it would be economically impractical not to concentrate the station's programming in this area. However, although the Board agrees with the Presiding Judge that WHJB presently programs primarily for Greensburg, we cannot accept the Presiding Judge's statement that:

> No effort is made to attract advertisers for the Pittsburgh market.

This statement is belied by the fact that the major personality on WHJB's program schedule is Davey Tyson, a former Pittsburgh radio personality for many years. From Monday through Friday, Tyson is on the air from 9:30 A.M. to noon, and again from 1:00 P.M. to 3:00 P.M.[27] In its advertising material WHJB emphasizes Tyson's connection with Pittsburgh by including a feature article on Tyson from *The Pittsburgh Press.*

21. Tyson's main programming effort for WHJB consists of hosting a morning and afternoon "call-in" program called "The Davey Tyson Phone Party". Again, WHJB's advertising stresses the impact of this program on the Pittsburgh market. The promotional material reads as follows:

> HOW DO YOU REACH 177,000 HOUSEWIVES IN WESTMORELAND COUNTY 1st MOST POPULOUS COUNTY SURROUNDING THE *PGH. MARKET* 5th MOST POPULOUS COUNTY IN PA.
>
> In Westmoreland County, 'Every day is Ladies Day . . . On Davey Tyson's Phone Party!' And Davey's phone party means solid sales for you in the 1st most populous county surrounding *the Pittsburgh market!!* Think of it . . . Westmoreland County with total retail sales of $361,585,000 . . . and WHJB serves it all.

[27] It is not possible to say if Tyson also does other programs, since WHJB's exhibits do not provide the name of the host for all programs.

Take a closer look at Davey Tyson! Davey's been with WHJB since '64, but started in radio in 1932 and now has some 17 year's *experience and sales power in the Pittsburgh market.* Matter of fact, Davey still retains many loyal listeners from his early days in *Pittsburgh.* But, true to Davey's congenial style, he has captivated the Westmoreland County women's market since his first days on WHJB.

Proof? You bet! Take the cookbook contest WHJB recently sponsored with Davey as host. A cookoff was held with prizes for the best recipes. The winning recipes were reproduced in cookbook form. Davey invited his listeners to send for a copy and include 25¢ for handling.

In just 4 short weeks, 6,150 requests poured in. 3,500 from Westmoreland County alone . . . and the remainder from a big plus fringe area surrounding *the entire Pittsburgh market.*

Proof enough? Take advantage of this tremendous market, include Davey Tyson in your radio budget. [Emphasis added.]

A map accompanying the promotional material indicates that 2,185, or more than one-third of the responses to the contest came from Allegheny County, in which Pittsburgh is located.

22. The promotional materials for the station also emphasize the Pittsburgh market. For example:

If you could take our 'Pulse' about now, you might be surprised! It's rising! (Is that good?)

Recent PULSE, INC. rating figures show that WHJB Radio is becoming the No. 1 station in the counties surrounding *the Pittsburgh area.* (What, no #2 appeal?)

Yes sir! WHJB Radio is reaching the 232,000 households in Beaver, Washington and Westmoreland counties, better than any station in Beaver Falls, Butler, Cannonsburg, Latrobe, McKeesport, New Kensington or Washington. (Good thing we're here, huh?)

And . . . in the Monday to Friday PULSE, INC. figures for the *four county Pittsburgh market* in the 6 a.m. to 12 noon time periods, WHJB Radio's rating was surpassed only by the BIG BOYS in *Pittsburgh.* KDKA, WTAE, KQV and WWSW! (That's nice company to be with!)

What's it all prove anyway? Just that WHJB is your best buy for a broadcast message, once your advertising has to step over the Allegheny County line. Why buy a dozen beats when one WHJB Radio pulsebeat will do the job in *suburban Pittsburgh!* (Cause we're in the 'heart' of the listener! WOW!) [Italic added.]

Further emphasizing the Pittsburgh orientation of the station is that, of the *three* telephone numbers available to listeners of "The Davey Tyson Phone Party", *two* are Pittsburgh exchanges. In the event the requested power increase is granted, WHJB indicates that its major programming change will be invitations to leaders and spokesmen from the gain area, *which is primarily Pittsburgh,* to appear on the station "call-in" programs. Since the Tyson program is already heavily oriented toward Pittsburgh, this will only tend to increase the present trend. These policies of station WHJB demonstrate a continued and conscious effort to gain access to the Pittsburgh market at the expense of service to its local community and the present request for a power increase is in keeping with this intent.[28]

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[28] As the Board said in *Naugatuck:*

". . . if a suburban station has and will continue to be truly a station of its named community, such station, like any other licensed broadcast facility is entitled to the benefits of the Commission's general policy of encouraging optimum utilization of the broadcast frequencies." 8 FCC 2d 778, 10 RR 2d at 762.

Thus, no station is entitled, *as a matter of right,* to the maximum authorized power for its class.

23. Finally, the Board has considered the various factors which would mitigate a decision adverse to WHJB on 307(b) grounds and has found none. For example, although WHJB claims that the shape of its radiation pattern (and therefore its coverage of Pittsburgh) results from directionalization to avoid interference with a station in Beckley, West Virginia, only two possible radiation patterns were tested—a 1 kw non-directional which caused interference and the presently proposed pattern. This is not sufficient proof that the applicant had no alternative to coverage of Pittsburgh. The total coverage of Pittsburgh by WHJB's 5 mv/m contour is the direct result of the applicant's decision to seek a power increase instead of redesigning its present directional pattern. Furthermore, no lack of service to the Pittsburgh gain area was demonstrated. Although no definite evidence was introduced, WHJB itself indicates that the Pittsburgh area has ample broadcast services. Therefore no proven reason exists for the power increase other than service to Pittsburgh.

SUMMATION

24. In sum, the power increase requested by WHJB is intended to serve the larger community of Pittsburgh rather than the station's specified community of Greensburg. This conclusion is based on the following: (a) no need for the increase has been shown because WHJB has not proved the existence of significant manmade noise interfering with its signal and the requested power increase is greatly in excess of that needed to provide primary service to all of Westmoreland County since WHJB's engineer stated that a 2.0 mv/m signal could be rendered to the county by a redesign of the present radiation pattern; (b) no demographic comparison of Pittsburgh and Greensburg has been made and no separate and distinct needs of Greensburg or the gain area have been illustrated; (c) it has not been proved by the applicant that Greensburg advertising revenues alone can support the proposal; and (d) the attention now accorded the Pittsburgh market by WHJB appears to be an accurate forecast of a future attempt to concentrate service on Pittsburgh—exactly the type of conduct that the *Policy Statement* attempted to prevent. In view of all the foregoing, the public interest, convenience and necessity would not be served by a grant of the subject application.

25. ACCORDINGLY, IT IS ORDERED, That the petition to amend record *nunc pro tunc* or to reopen record, filed January 6, 1972, by WHJB, Inc., IS GRANTED, to the extent that the record in the proceeding IS REOPENED; that WHJB Radio, a Limited Partnership, IS SUBSTITUTED FOR WHJB, Inc. as the applicant in this proceeding; and that the RECORD IS CLOSED; and

26. IT IS FURTHER ORDERED, That the application of WHJB, Inc. (BP-17962) IS DENIED.

Federal Communications Commission,
Dee W. Pincock,
Member, Review Board.

APPENDIX

Rulings on Exceptions of the Broadcast Bureau

Exception No.	*Ruling*
1	*Granted.* The last sentence of paragraph 19 of the Administrative Law Judge's findings is corrected as requested.
2	*Denied.* The material is relevant in the context of this case; however, as discussed at paragraph 14 of this Decision, WHJB failed to prove that such a need exists.
3, 4, 6	*Granted* in substance. As presently operating WHJB is actively competing for and attracting Pittsburgh area revenues. Operating as proposed, WHJB can be expected to further attract such revenues. See paragraphs 20–22 of this Decision.
5	*Granted* in part and *denied* in part. See paragraph 15 of this Decision.
7	*Granted in substance* for the reasons discussed in paragraphs 3, 7, 8, 17, 18 and 19 of this Decision.
8	*Granted* for the reasons discussed in paragraphs 4–6 of this Decision.
9	*Granted* for the reasons discussed in paragraphs 10 and 11 of this Decision.
10	*Denied.* Paragraph 4 of the Presiding Judge's conclusions is not "irrelevant" to a resolution of the Suburban Community issue.
11, 12	*Granted* in substance. See paragraphs 13, 14 and 23 of this Decision.
13	*Granted* for the reasons stated in the whole of this Decision.

Rulings on "Protective" Exceptions of WHJB, Inc.

Exception No.	*Ruling*
1	*Granted* to the extent that WHJB's engineer qualified as an expert witness and his definition of man-made noise was unchallenged; *denied* in all other respects for the reasons stated in paragraphs 5 and 6 of this Decision.
2	*Denied.* The record does not support the requested findings. See paragraphs 4–8 of this Decision.
3	*Denied* for the reasons discussed in paragraphs 4–7 of this Decision.
4	*Denied* for the reasons discussed in paragraphs 7 and 8 of this Decision.

Separate Concurring Opinion of Board Member Sylvia D. Kessler

1. I concur in paras. 1–8 of the Board's decision relating to the failure of the applicant here to establish that the magnitude of the power increase requested is necessary to overcome alleged man-made noise in Westmoreland County, and in the ultimate ordering clause denying this application. Generally, however, I disagree with the rationale of the Board's decision, particularly that portion set forth in paras. 9–15 dealing with the requirements of the so-called Suburban Community issues, in light of the Court's opinion in *Northern Indiana Broadcasters, Inc.* v. *FCC*, — U.S. App. D.C. —, 459 F.2d 1351, 23 RR 2d 2113 (1972). In that decision the Court referred to prior Commission precedent or "relevant case law—*Jupiter Associates . . . Naugatuck Valley Service . . . Monroeville Broadcasting Company . . .*" and

stated that these cases [1] "do little to clarify the standards of *how* different the separate needs and interests" of the smaller community must be from those of the big city in order to rebut the Commission's Policy Statement. The Court stated that "on the basis of its own murky precedent the Commission could have decided the instant case [*Northern Indiana*] the opposite way without a violent intellectual wrench, a not very satisfactory state of affairs." The Court called for clarification of subissues (a) and (c), and for specification of "what *types* and what *degree* of evidence is required to rebut the Commission's Policy Statement."

2. Despite the foregoing critical observations of the Court, if not its mandate, the Board's opinion here relies on the prior relevant case law which the Court described as "murky", and it also extends that case law. It is further stated in the Board's opinion here, at footnote 15, that "in the present case it would take a *substantial* 'intellectual wrench' to decide this case the other way"; however, this record indicates that this simply is not so. The Administrative Law Judge proposed a grant of the subject application, and a review of the initial decision indicates that he had no difficulty in reaching this result. There is also a dissenting member of this panel of the Board whose separate dissenting statement indicates that he, likewise, has no difficulty in reaching his conclusion that this record warrants a grant of the application. Similarly, if this record reflected an objective evidentiary showing with respect to (a) Greensburg's problems, needs and interests, and (b) this existing station's "unusual sensitivity" [2] in catering to that community's need for local self-expression as shown by its past program performance, and its proposed program proposal,[3]

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[1] *Jupiter, supra,* is reported at 12 FCC 2d 217 (29 March 1968); aff'd. *Jupiter Associates, Inc.* v. *FCC,* 136 U.S. App. D.C. 266, 420 F.2d 108 (1969). *Naugatuck, supra,* is reported at 8 FCC 2d 755 (1967), aff'd *sub nom. Northeast Broadcasting, Inc.* v. *FCC,* 130 U.S. App. D.C. 278, 400 F.2d 749 (1968). *Monroeville, supra,* is reported at 12 FCC 2d 359 (1968), aff'd *sub nom. Miners Broadcasting Co.* v. *FCC,* D.C. Cir. No. 21,937 (1969) (unreported).

[2] *Monroeville, supra,* where the Commission's decision at para. 20 speaks in terms of "above average sensitivity" and "meaningful sensitivity". *Cf. Policy Statement on Comparative Broadcast Hearings,* 1 FCC 2d 393 (1965), wherein the Commission stated that "a past record within the bounds of average performance will be disregarded, since average future performance is expected . . . and the Commission expects every licensee to carry out its proposals." In this statement, the Commission further stated ". . . we shall consider past records to determine whether the record shows . . . ***unusual attention*** to the public's needs and interests. . . ." (Emphasis supplied.)

[3] In this connection, attention is directed specifically to paras. 17, 18, 22, 23, 24, 27, 32, 34, 36 and 37 of *Naugatuck, supra.* There, para. 17 relates to the activities of the Naugatuck schools requiring greater broadcast coverage; para. 18 relates to the taping of musicals, discussion programs, etc., on behalf of Naugatuck schools; para. 22 relates to the actual broadcast of six to seven school musical concerts; para. 23 relates to adult educational programming; para. 24 to the need for a 30-minute weekly school report; para. 27 relates to the manner in which the station serves Naugatuck industrial needs, and how it proposes to improve its coverage; para. 32 relates to a breakdown of the station's local news by communities, and it is stated that of the local news, "83% pertained to Naugatuck matters, 11% to Waterbury, and 6% to other nearby communities." Footnote 11 also defines local news as encompassing Naugatuck, Waterbury, Prospect, Beacon Falls, Cheshire, Middlebury, and Seymour—the immediate Naugatuck Valley area.

Suffice it to say, the instant Greensburg record is devoid of the meaningful evidence reflected in the *Naugatuck* decision which may be illustrated again by reference to paras. 34 and 36 thereof where there are findings establishing that the Naugatuck station presented on the average seven or eight programs yearly dealing with local matters of a controversial nature on an equal time basis, and where at para. 36 the findings read, as follows:

"I addition to the spot-type of announcements, . . . some 15-minute and longer programs on behalf of local civic organizations [are carried] such as the Lions Club, the Kiwanis, and Rotary. The Rotary program is a yearly one where WOWW [the Naugatuck station] the first Sunday in February, is made available to the Rotary Club for the entire day . . . As a result of this program, a sum of $1,700 was raised one year by the organization. This was used primarily to re-equip a school library which was burned out."

I would experience no intellectual wrench whatsoever in granting this application. Indeed, I believe that if the evidence in this record was adequate in these respects the Policy Statement would compel a grant of this application, as would the crux of the *Naugatuck* decision, *supra*, which, in pertinent part, reads, as follows:

> . . . if a . . . station has and will continue to be truly a station of its named community, such station, like any other licensed broadcast facility, is entitled to the benefits of the Commission's general policy of encouraging optimum utilization of the broadcast frequencies. . . . Here, we have an existing licensee . . . with a prior record which has made a strong and convincing showing based in substantial part, upon its *past record;* in our view that showing adequately rebuts the presumption. . . . (*Italics supplied.*)

3. On the basis of a comparison of (a) my above described simple approach to the Suburban Community policy, and (b) the far more elaborate and difficult requirements spelled out in the Board's decision here as the required showing necessitated by the Suburban Community issues, it is evident that there are irreconcilable conflicts of views in the areas earmarked by the Court for clarification, namely, "what type and what degree of evidence is required to rebut the Commission's Policy Statement", although on the basis of this record, albeit for substantially different reasons, Board Member Pincock and I are both constrained to deny the subject application. Obviously, there are even greater gaps of irreconcilable opinion with our dissenting Board Member Nelson, as shown by his separate statement. Moreover, this irreconcilable conflict of opinion relating to "what types and what degree of evidence is required to rebut the Commission's Policy Statement", does not stop with the participating members of this panel of the Board. There are other and different wide gaps of variable opinion, including that of the applicant, the Commission's Broadcast Bureau, and the Administrative Law Judge, where all, except the Bureau, posit a grant of the subject application.

4. In sum, and without question, there is an existing state of confusion, and when this confusion is considered together with the Court's call for clarification, it is my view that a unique state of affairs is presented which (a) leaves a host of problems challenging the validity of the Board's decision here, and (b) compels Commission review because there are policy questions requiring Commission clarification not only with respect to the Suburban Community issues, *per se*, but also with respect to the interrelationship of the requirements of the more recently adopted *Primer on Community Ascertainment*,[4] on these issues, if not on the Suburban Community policy, *per se*. For these reasons, I would have preferred certification of this case to the Commission. With the backlog of adjudicatory cases in mind, I do not believe that the inordinate time and expense involved in reviewing this case and preparing three separate opinions, has resulted in the orderly and efficient administration and dispatch of the Commission's business. And considering this state of affairs, it may reasonably be stated that there is a likelihood of this same confused and divided opinion in other pending AM cases before the Board involving the Suburban Community policy, as well as in pending FM cases involving similar types of issues.

[4] 27 FCC 2d 650 (1971).

Under these circumstances, I now recommend that the Commission take whatever steps it deems appropriate to clarify [5] this situation involving the Suburban Community policy in order to avoid a waffling of review of these cases, first, by the Board, and, then, by the Commission.

5. Briefly turning to note 3 of Board Member Nelson's dissenting statement, I am compelled to emphasize that, contrary to his view, I am not charging WHJB with inadequate programming. Conversely, I am not holding that WHJB's programming has been adequate or has met the needs of the community, because I deem this record grossly deficient upon which to rest such a conclusion. In any event and more to the point of what I believe to be the *sine qua non* of the Suburban Community policy with respect to an existing station, I am holding that on the basis (a) of the insubstantial evidence WHJB did produce in the context of the relationship of its programming (past or proposed) to Greensburg's problems, needs and interest, and (b) of the total absence of meaningful evidence concerning Greensburg's problems, needs and interest, no determination whatsoever can be made as to whether WHJB's programming (past or proposed) shows "unusual attention" to Greensburg's local self-expression needs. See notes 2 and 3, *supra*. With respect to Board Member Nelson's further observation in note 3 of his dissenting statement that he does not read the Suburban Community issues as encompassing past programming, I merely note, in passing, that (a) he not only participated as a panel member in the Board's decision in *Naugatuck*, *supra*, he and former Board Member Slone comprised the Board's majority which granted that application; and (b) paras. 18–50 of that decision are devoted to a lengthy discourse of findings of fact relating to that station's past programming. And it is on the basis of these copious and detailed findings that they reached the conclusions in *Naugatuck*, *supra*, which have already been quoted *haec verba* at para. 2 above.

6. Perhaps, in light of the more recent *Primer* requirements, *supra*, of the interrelationship of these requirements to the Suburban Community issues, and of the continuing and still evolving principles relating to the functions of the Commission's renewal processes, past programming should not be in issue. If it is not, the question is posed as to whether in the eight-year period since the adoption of the Suburban Community policy, changes in the views of individual Commissioners as membership in the Commission has changed or as Commissioners come to view matters differently with the passage of time, the Suburban Community policy requires changing. However, it is axiomatic that such change must be enunciated by the Commission, for it extends far beyond the jurisdiction of this Board.

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[5] After the Court's decision in *Minere Broadcasting Service, Inc.* v. *FCC*, 121 U.S. App. D.C. 222, 349 F.2d 199 (1965), the Commission held a consolidated type of oral argument, permitting all parties involved in a number of cases to participate. I also note the Dissenting Statement of Chairman Dean Burch in the *El Cajon* case, 29 FCC 2d 370 (1971), where he states that:

"I have some doubts as to the efficacy of our Suburban Community policy, and note that it is coming before us for review. . . . We can require the station not only to continue its present efforts . . . but, since with increased power there should come increased revenues, it can be called upon to do more for El Cajon (in its news, religious, educational, public affairs, etc. efforts). We can obtain detailed reports in this respect at renewal time."

DISSENTING STATEMENT OF BOARD MEMBER
JOSEPH N. NELSON

I would grant the subject application on the grounds that (a) the standards used by the Commission in applying its *Suburban Community* policy have been strongly criticized and found inadequate by the Court of Appeals in its recent decision in *Northern Indiana Broadcasters, Inc.* v. *FCC*, 148 U.S. App. D.C. 327, 459 F.2d 1351, 23 RR 2d 2113 (1972); (b) the standard *Suburban Community* issues framed herein, designed for applications for new stations, do not fit the Greensburg proposal which involves an existing station in a community which is 20 miles from Pittsburgh and which is not a suburb thereof;[1] (c) there is no competing applicant here, no question of an unwarranted 307(b) preference and, thus, one of the major objectives of the policy would not be frustrated by a grant; and (d) a grant would serve the public interest and would not be inconsistent with the intent and purpose of the *Suburban Community* policy statement.

In *Northern Indiana, supra*, (involving a community adjacent to a larger city) the Court of Appeals (a) questioned whether the standards applied by the Commission were "precisely phrased"; (b) stated that the Commission's precedents "leave the next applicant devoid of any guidelines as to the type and degree of evidence required to rebut the Commission's Policy Statement"; (c) stated that the Commission's prior holdings "suggest that on the basis of its own murky precedents the Commission could have decided the instant case the opposite way without a violent intellectual wrench, a not very satisfactory state of affairs"; (d) "pointed out the lack of clarity and resulting difficulty in securing uniformity of application in the FCC standards"; and (e) concluded that it was "*incumbent upon the Commission to clarify the standards* for implementing its Suburban Community Policy Statement, if the latter is to serve as a fair and reasonable means for regulating the grant or denial of requests for licenses to operate radio stations in suburban communities." (Italic added.)[2]

From the above, it may well be urged that, in effect, the Commission's *Suburban Community* policy statement has been suspended by the Court pending clarification of the Commission's standards. In the past, in somewhat similar circumstances, actions in various suburban community cases were held in abeyance pending clarification by the

[1] At the oral argument, the Bureau was unable to cite any case where the *Suburban Community* policy was applied to a station in a community similarly distant from the presumptive larger community.

[2] In a constructive vein, I would point out that the recurring problems discussed by the Court may stem from the fact that certain factual situations do not fit the policy mold: that applying the policy to such situations results in frustrating efforts to put a square peg in a round hole; that the Policy Statement rationale that suburban community stations tend to identify themselves with adjacent larger communities may not be applicable to long established stations operating many miles away from the larger community; that standards and issues applicable to suburban communities *adjoining* larger communities may not be appropriate where such communities are 20 miles apart and involve an existing station (as in the case before us now); that because a station would "incidentally" serve a large community, "incidentally" does not automatically become "realistically"; that a primary objective (improved county coverage) should not be nullified by a secondary effect (penetration of a large community); that conversion of the policy to an exclusionary technique tends to strengthen the monopoly position of the big city stations; and that the end result of the policy is the use of a quantitative engineering slide-rule (5 mv/m signal penetration) to raise a presumption of intended service to a distant city, and at the same time requiring a detailed *qualitative*, socio-economic, evidential showing on the part of an applicant to overcome that presumption.

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Commission of its standards. The following chronology supports this view: (a) on June 17, 1965, in *Miners Broadcasting Service, Inc.* v. *FCC*, 349 F.2d 199, 5 RR 2d 2086, the Court of Appeals, with criticisms similar in effect to those set forth in *Northern Indiana, supra*, remanded a suburban community case on the grounds, among others, that there was a need for the clarification or establishment of appropriate standards by the Commission; (b) on July 7, 1965, the Commission adopted an Order (1 FCC 2d 319, 5 RR 2d 547) scheduling oral argument on "the question of what standards should be applied" in suburban community cases; (c) the oral arguments were heard on October 8, 1965; and (d) on December 22, 1965, the Commission adopted its *Suburban Community* policy statement (2 FCC 2d 190, 6 RR 2d 1901), setting forth the standards to be applied in suburban community cases. Accordingly, similar Commission proceedings are required before a denial of WHJB's application will meet the Court's mandate. In any event, it is my view that the question of suspension of the Commission's Policy Statement does not require resolution now because, on the basis of this record, a grant of the subject application would not only serve the public interest but also would be consistent with the intent and purpose of the Commission's *Suburban Community* policy.

The essentials of the instant factual situation are simple and clear-cut. Greensburg, the *county seat* of Westmoreland County, is located about 20 miles from Pittsburgh. Station WHJB has been regularly licensed by the Commission to operate in Greensburg *since 1934*.[3] It is the only fulltime standard broadcast station in Westmoreland County, transmitting on 620 kHz, 500 w, 1 Kw–LS, DA–2, Class III. Although the station's present 2.0 mv/m contour serves 15% of the Pittsburgh area and population,[4] it *does not cover all of Westmoreland County;* excluded therefrom are such urban areas as the communities of Monessen (pop. 18,424), North Belle Vernon (pop. 3,148) and West Newton (pop. 3,982). Further, because of the erection of water towers and power lines and the building up of rural areas, additional *county* coverage problems were encountered.[5] Thus, WHJB's proposal to operate with 5 kw would place a 2.0 mv/ signal over all of Westmoreland County and is designed to improve its service to the county.[6] The fact that Pittsburgh is 20 miles away does not detract from the station's motivation. It means, simply, that WHJB would "incidentally" increase its penetration of Pittsburgh rather than "realistically" becoming a Pittsburgh station. As a Class III station, WHJB is eligible

[3] As I read the issues, they call for a showing as to WHJB's *prospective* programming. If, as the Concurring Statement, for the first time in this case, indicates, WHJB's past programming is in issue, then it must be pointed out that the Broadcast Bureau, the Initial Decision, the Board's Decision herein and the Commission have all found that WHJB's programming has been meeting the needs of its service area and has been in the public interest. Thus, at no time has WHJB had the need or the opportunity to defend itself against a charge of inadequate programming.

[4] Ironically, the Court of Appeals stated in *Miners Broadcasting, supra*, ". . . The Commission must state the relevance of the difference between service to one-third of Pittsburgh and service to 98 per cent of it or make additional findings of fact in support of its determination."

[5] Many complaints were received from listeners.

[6] Since WHJB commenced operation, service to Westmoreland County has taken on added significance *vis-a-vis* Greensburg. The county population has risen from 294,995 (1930 Census) to 377,079 (1970 Census), while Greensburg's population for those years has fallen from 16,508 to 15,870.

to request and operate with 5 kw power since it could not apply for less power under the rules. As stated by the Commission "Class III stations broadcast with a maximum power of five kilowatts and are intended to serve a particular city and the rural area in the region around the city." *Amendment of AM Station Assignments*, FCC 63–468, 25 RR 1615.[7] In light of the above, I do not believe that the happenstance location of Pittsburgh should block a grant of a proposal which is consistent with the Commission's Rules and which evidences obvious benefits and no detriments.

Finally, some comment is warranted with respect to the position of the Bureau and the Decision herein that while WHJB has made a satisfactory showing under the *Suburban* issue, it has failed to do so under the *Suburban Community* issue. A careful analysis of those issues indicates that the major requirements of both can be met substantially by the same evidential showing. In the instant case, having met fully the *Suburban* issue, and having shown estimated *local* revenues of 76.7% and no increase in Pittsburgh revenues (14.6%), WHJB may well urge that, on the basis of the above facts alone, it should be concluded that it has complied *substantially* with the requirements of the *Suburban Community* issue.

[7] The non-applicability of a policy because of distance has been recognized by the Commission in its *Primer on Ascertainment of Community Problems*, 27 FCC 2d 650, 21 RR 2d 1507 (1971), where the Commission stated that "no major city more than 75 miles from the transmitter site need be included in the applicant's ascertainment, even if the station's service contours exceed that distance." This limitation was adopted in deference to Class I AM stations (50 kw) which are designed to provide primary and secondary service to very large areas. Thus, as a Class III, 5 kw station, intended to serve a particular city (Greensburg) and the rural areas around the city (Westmoreland County), WHJB should not, realistically, be presumed or expected to serve Pittsburgh—20 miles away—which has numerous AM, FM and TV stations.

F.C.C. 71D–57

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WHJB, INC., GREENSBURG, PA. For Construction Permit	Docket No. 18868 File No. BP–17962

APPEARANCES

Isadore G. Alk, Esq., on behalf of WHJB, Inc., Greensburg, Pennsylvania; *Jay L. Witkin, Esq.*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ERNEST NASH

(Issued August 26, 1971; Released September 1, 1971)

PRELIMINARY STATEMENT

1. WHJB, Inc., licensee of WHJB, Greensburg, Pennsylvania, has applied for an increase of daytime power from 1 kw to 5 kw. In a Memorandum Opinion and Order, FCC 70–547, released May 27, 1970, the Commission designated the application for hearing on the following issues:

1. To determine whether WHJB, Inc., is financially qualified to construct and operate its proposed station.

2. To determine whether the instant proposal will realistically provide a local transmission facility for its specific station location or for another larger community, in the light of all the relevant evidence, including, but not necessarily limited to, the showing with respect to:

(a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programming needs;

(b) The extent to which the needs of the specified station location are being met by existing aural broadcast stations;

(c) The extent to which the applicant's program proposal will meet the specific unsatisfied programming needs of its specified station location; and

(d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

3. To determine the efforts made by WHJB, Inc., to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

4. To determine, in the light of evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience and necessity.

WTRA Broadcasting Company, licensee of Station WTRA, Latrobe, Pennsylvania, was made a party to the proceeding.

2. Prehearing conferences were held on July 8, September 15, and October 15, 1970. Hearings were held on January 13 and February 8,

1971. The record was closed on February 8, 1971. WTRA did not appear or otherwise participate in any of the proceedings.

FINDINGS OF FACT

3. The net cost of the transmitting equipment to be installed is $19,383.86. Installation costs are estimated at not to exceed $6,000.00. In order to finance the cost of acquiring and installing the new transmitting equipment, WHJB has received a loan commitment from the Pittsburgh National Bank in the sum of $40,000. The loan will carry an interest rate of 1% above the primary rate at the Pittsburgh National Bank and will be repayable in installments not to exceed $500.00 per month during the first year. Repayments on the loan will be made from operating revenues and from a cash reserve in excess of $10,000 maintained in a checking account at Pittsburgh National Bank. Revenues of WHJB during 1968, 1969 and 1970 have substantially exceeded operating costs. In addition, Melvin A. Goldberg, president of WHJB, has committed himself personally to make available to the station such additional funds as the station may require during its first year of operation of the new facilities. Goldberg has current assets in the form of cash, cash surrender value of insurance policies in excess of $35,000. His current income is adequate to satisfy his current liabilities and monthly payments on long-term loans.

4. Operating expenses, in the event the application to increase power is granted, are expected to increase as follows:

Increase in technical expense	$1,800.00
Additional programming cost	10,000.00
Additional selling, general and administrative costs	7,000.00
Interest expense	3,200.00
Total	22,000.00

5. Existing revenues, together with the funds to be made available from the Pittsburgh National Bank and, if necessary from Goldberg, will be adequate to cover the transmitter cost, cost of installation and increased operating costs. It is reasonable to anticipate that additional revenues will be derived in the event of the increase in power. Total estimated revenues are $369,930.00 as compared to operating costs of $332,700.

Suburban Community Issue (Issue 2)

A. Engineering Considerations

6. Radio Station WHJB has been licensed to Greensburg, Pennsylvania, since 1934. Its latest license renewal was granted by the Commission on July 24, 1969.

7. Greensburg is located about in the center of Westmoreland County, at the junction of U.S. Routes 30 (E/W) and 119 (N/S) and Pennsylvania Routes 66 (N/S), 130 (E/W), 136 (N/S) and 819 (N/S). The New Stanton Interchange of the Pennsylvania Turnpike and Interstate 70 (E/W) is six miles south via U.S. Route 119, and the Irwin Interchange of the Pennsylvania Turpike is eight miles

west via U.S. Route 30. Adjoining it are the boroughs of South Greensburg and Southwest Greensburg. Surrounding these three communities is the township of Hempfield. Together they comprise the area known as Greater Greensburg.

8. Together with the city of Jeannette and the boroughs of Manor, Penn, Adamsburg, Arona, Madison, Hunker and Youngwood, Greater Greensburg forms an enclave within and at the easterly peripheral end of the Pittsburgh Urbanized Area, separated from the main segment by a substantial rural area and the Pennsylvania Turnpike. This enclave encompasses an area of 90.6 square miles. The enclave had a total population of 76,218 in 1960 and 96,949 in 1970.

9. The population of Greater Greensburg is shown by the 1960 Census and the official 1970 Advance Report to be as follows:

	1960	1970
Greensburg	17,383	15,870
South Greensburg	3,058	3,288
Southwest Greensburg	3,264	3,186
Hempfield Township	29,704	39,196
	53,409	61,540

B. Technical Considerations

10. WHJB, Inc., proposes to change the facilities of Station WHJB, Greensburg, Pennsylvania, which now operates as a Class III station, unlimited time, on 620 kHz with one kilowatt power daytime and 500 watts power nighttime, employing different directional antennas day and night. The daytime power would be increased to five kilowatts and the daytime directional antenna pattern would be modified.

11. Greensburg city has a 1960 population [1] of 17,383 and a preliminary 1970 population [2] of 16,771. It is the county seat of Westmoreland County and is a part of the Pittsburgh Urbanized Area and the Pittsburgh Standard Metropolitan Statistical Area, the latter of which is comprised of Allegheny, Beaver, Washington and Westmoreland counties. The community lies approximately 20 miles southeast of Pittsburgh at the closest limits and 26 miles from downtown Pittsburgh. It is adjoined on the southwest by Southwest Greensburg borough and on the south by South Greensburg borough. Jeannette city lies 2.4 miles to the northwest at the closest limits. The area surrounding Greensburg is the urban township of Hempfield. The various areas contain the following population:

[1] Unless otherwise specified, 1960 U.S. Census data are used throughout. Figures were taken from 1960 U.S. Census data, Vol. 1, pp. 40–22 to 40–49.

[2] Figures were taken from Preliminary Reports, 1970 U.S. Census of Population, Pennsylvania, October 1970, PC (P1)–40 and PC (P2)–156.

Area	1960 population	Preliminary 1970 population
Westmoreland County	352,629	377,079
Pittsburgh Urbanized Area	1,804,400	
Pittsburgh Standard Metropolitan Statistical Area	2,405,435	2,383,753
Southwest Greensburg Borough	3,264	3,142
Jeannette City	16,565	15,078
South Greensburg Borough	3,058	3,226
Hempfield Township	29,704	40,036
Pittsburgh City	604,332	512,789
Allegheny County	1,628,587	1,591,270
Beaver County	206,948	205,998
Washington County	217,271	209,406

12. Station WHJB is the only fulltime standard broadcast station in Westmoreland County. The following standard broadcast (AM) and FM broadcast stations are located in Greensburg or elsewhere in Westmoreland County:

Station	*Location (all in Pennsylvania)*
AM:	
WHJB, 620 kHz, 500 w, 1 Kw-LS, DA-2, U, Class III	Greensburg (applicant).
WQTW, 1570 kHz, 1 Kw, D, Class II	Latrobe.
WTRA, 1480 kHz, 500 W, D, Class III	Latrobe.
WKPA, 1150 kHz, 1 Kw, DA-D, Class II	New Kensington.
FM:	
WOKU-FM, 107.1 MHz, 3 Kw(H), 2.95 Kw (V), 300 ft., Class A.	Greensburg (applicant's station).
WNUF, 100.7 MHz, 20 Kw (H&V), 460 ft., Class B	New Kensington.

Pittsburgh, in Allegheny County, has 8 AM, 11 FM and 7 TV stations.

13. A study was made by the applicant's consulting engineer to determine if the facility could operate with a power of 1,000 watts non-directional in order to improve the County coverage since the facility lies generally in the middle of the county. The only allocation problem that was presented by 1,000 watt nondirectional operation was co-channel interference to Station WWNR, operating on 620 kHz in Beckley, West Virginia. A series of field intensity measurements were taken to show what the allowable radiation would be in this direction toward the southwest. The measurements showed that non-directional operation would not be possible.

14. Thereupon, a five kilowatt directional design was studied by the consulting engineer to see what improvement could be made in all directions with respect to Westmoreland County. As shown by the design limitations, a substantial improvement in service would result in all directions from WHJB site, except to the southwest in the direction of Beckley, West Virginia, where only a modest increase would be permissible and to the southeast where a loss in rural service would occur. In order to confine the 5,000 watt energy within the design limitations to the north, northeast, east, southeast, south and southwest, the balance of the antenna radiated power had to be

directed to the northwest in order to arrive at a design to meet the minimum efficiency of 392 mv/m RMS for five kilowatts power. However, the applicant's consulting engineer conceded that it is possible to redesign the present radiation pattern so that a 2.0 mv/m signal can be rendered to all of Westmoreland County employing a power of one kilowatt.

15. Primary service is presently provided within the WHJB 0.5 mv/m contour to 1,523,087 persons in an area of 8,135 square miles. Under the proposed operation, this would be increased to 3,771,665 persons [3] in an area of 15,949 square miles. A total of 2,255,730 persons in an area of 8,026 square miles would gain WHJB primary service and 7,152 persons in an area of 212 square miles located in rural areas 53 to 74 miles southeast of Greensburg in Maryland would lose it. Thus, there would be a net gain in service to 2,248,578 persons in an area of 7,814 square miles. The following stations provide primary service (0.5 mv/m or greater) to the proposed WHJB loss area:

Station [4]	Location	Percentage of area served
WMBS	Uniontown, Pa	60
KDKA	Pittsburgh, Pa	75
WCUM	Cumberland, Md	90
WTBO	Cumberland, Md	90
WUOK	Cumberland, Md	100
WBFD	Bedford, Pa	25
WVSC	Somerset, Pa	100

[4] Although no contour map was submitted to support this tabulation, it is noted that three stations (2 AM and 1 FM) cover 100% of the area.

From 5 to 7 AM stations provide primary service to any one portion of the loss area. In addition, one FM station, namely, WKGO in Cumberland, Md., provides 1.0 mv/m service to all of the loss area. The 2.0 mv/m urban gain area includes some 70 cities of over 2,500 persons located in eleven counties.[5] The cities have a total population of 1,127,791 persons. Including urbanized areas, the urban total is increased to 1,363,462 persons.[6]

16. The present 25 mv/m contour of Station WHJB falls 14.5 miles southeast of the nearest city limit of Pittsburgh and the proposed 25 mv/m contour falls 1.5 miles short of the city.

17. Applicant's engineer stated that Westmoreland County is a manufacturing and industrial area where high signal levels are desirable in order to overcome man-made noise. However, he submitted no

[3] Cities of 2,500 or more persons and urbanized areas not receiving a 2.0 mv/m signal were excluded.

[5] The counties are: Butler, Lawrence, Beaver, Washington, Allegheny, Armstrong, Indiana, Cambria, Somerset, Fayette, and Westmoreland.

[6] There would be an expansion of 2.0 mv/m service from 903,386 persons in 2,501 square miles to 2,952,928 persons in 5,342 square miles; an expansion of 5.0 mv/m service from 237,884 persons in 916 square miles to 2,145,346 persons in 2,469 square miles; and an expansion of 25 mv/m service from 68,529 persons in 98 square miles to 323,865 persons in 338 square miles. Since rural areas are included in the 2.0 mv/m figures, and urban and rural areas are included in the 5.0 mv/m and 25 mv/m figures, the respective increases do not represent gains in primary service.

detailed evidence on the extent and location of such areas. A total of 69,322 persons would be included within the 25 mv/m gain area in Westmoreland County. This includes 10,470 persons in cities or boroughs of over 2,500 persons, 26,711 persons in unincorporated urban areas and 6,206 persons in boroughs of less than 2,500 persons, the remainder residing in rural areas. Because urban and rural figures are mixed, no weight can be given to them since the 25 mv/m contour is pertinent only to the business and industrial areas of the city of the applicant under Section 73.188(b)(1) of the Rules. Furthermore, a signal intensity of only 2.0 mv/m is required for primary service to urban areas and 0.5 mv/m to rural areas (See *S & W Enterprises, Inc.*, 37 FCC 220, 221, para. 4; *Courier-Journal* and *Louisville Times Co.*, 5 RR 348, 362, 367; *Moline Broadcasting Corp.*, 5 RR 466, 468; *Belle City Broadcasting Co.*, 5 RR 826A, 831.

18. The present 5.0 mv/m contour of Station WHJB falls 6.5 miles southeast of the nearest city limit of Pittsburgh and the proposed 5.0 mv/m contour covers the entire city, extending about 9.5 miles west of the city.[7] Thus, presuming the city of Pittsburgh as the applicant's community, the proposed operation would meet the requirement of Section 73.188(b)(2) of the Rules in that a minimum field intensity of 5 to 10 mv/m would be obtained over the most distant residential section.[8] Applicant's engineer stated that this was unavoidable in the design of the proposed 5,000 watt daytime directional antenna since there was no other direction to radiate the surplus power without causing or receiving prohibitive overlap from an existing co-channel or adjacent channel station and that as much of the power as possible was radiated in all other directions in the design of the antenna system.[9] At the present time, the 2.0 mv/m contour of Station WHJB includes 15% of the population of Pittsburgh.

19. The present directional antenna system projects the major lobe of its radiation pattern toward the southeast and the proposed facility projects its major lobe of radiation toward the northwest in the direction of Pittsburgh holding radiation to the southeast close to its present value. The following tabulation shows the extensions of the present and proposed 5.0 mv/m and 2.0 mv/m contours in various directions:

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[7] The proposed 5.0 mv/m gain area would include six counties, namely, Westmoreland, Allegheny, Beaver, Washington, Indiana and Armstrong and some 100 communities of 2,500 or more persons, each community having a population of less than 50,000 persons. The 25 mv/m gain area would include some 20 of these communities and substantial portions of about 5 others, all located in Westmoreland County or the eastern portion of Allegheny County.

[8] Section 73.188(b)(2) reads in pertinent part as follows:
(b) The site selected should meet the following conditions:
(2) A minimum field intensity of 5 to 10 mv/m will be obtained over the most distant residential section.

[9] A total of 95,243 persons would be included within the 5.0 mv/m gain area in Westmoreland County. This includes 60,515 persons in the cities or boroughs of over 2,500 persons, 1,485 persons in the urban town of Hempfield, and 8,596 persons in boroughs or towns of less than 2,500 persons, the remainder residing in rural areas. No weight can be given to this data because the 5.0 mv/m contour is only pertinent to the residential areas of the applicant's community under Section 73.188(b)(2) of the Rules. Furthermore, a signal intensity of only 2.0 mv/m is required for primary service to urban areas and 0.5 mv/m to rural areas.

Direction	Distance to 5.0 mv/m Contour (miles)		Distance to 2.0 mv/m Contour (miles)	
	Present	Proposed	Present	Proposed
North	20	30	32	43
Northeast	11	23	22	32
East	20	27	33	39
Southeast	25	24	42	38
South	16	16	28	28
Southwest	8	16	16	21
West	15	33	24	50
Northwest	15	46	29	67

Toward the southeast, the two contours encompass substantially rural areas in southern Pennsylvania and northwestern Maryland. In a northwesterly direction, the two contours cover substantial urban areas. The present 5.0 mv/m contour covers the eastern part of the Pittsburgh Urbanized Area but falls short of Pittsburgh and the proposed 5.0 mv/m contour encompasses most of the Pittsburgh Urbanized Area extending as far to the northwest as Ambridge-Aliquippa, Pa. The present 2.0 mv/m contour intersects the eastern part of Pittsburgh and covers all of the Pittsburgh Urbanized Area extending to the northwest to a point beyond New Castle, Pennsylvania.

20. The present 0.5 mv/m contour of Station WHJB covers all of Westmoreland County and the present 2.0 mv/m contour covers all of the urban areas in the county except the communities of Monessen (Pop. 18,424), North Belle Vernon (Pop. 3,148) and West Newton (Pop. 3,982). Thus, of the total county population of 352,629 persons, 327,075 persons receive primary service from the present operation of Station WHJB. This represents 92.7% of the total population of the county. The proposed 2.0 mv/m contour would cover all of the county. Thus, all of the county would receive primary service from the proposed operation. The applicant's consulting engineer stated that there are five or more 2.0 mv/m services available to the gain area in Westmoreland County which comprises the above three communities.

21. The following standard broadcast stations serve Greensburg with a signal intensity of 2.0 mv/m or greater daytime:

Station	*Location (all in Pennsylvania)*	*Station*	*Location (all in Pennsylvania)*
WQTW	Latrobe.	WEEP	Pittsburgh.
WTRA	Latrobe.	WPIT	Pittsburgh.
WAVL	Apollo.	WHJB	Greensburg.
WMBS	Uniontown.	WEDO	McKeesport.
KDKA	Pittsburgh.	WIXZ	McKeesport.

The following FM broadcast stations serve Greensburg with a signal intensity of 1.0 mv/m or greater:

Station	*Location (all in Pennsylvania)*	*Station*	*Location (all in Pennsylvania)*
WJAC-FM	Johnstown.	WPIT-FM	Pittsburgh.
WNUF	New Kensington.	WTAE-FM	Pittsburgh.
KDKA-FM	Pittsburgh.	WWSW-FM	Pittsburgh.
KQV-FM	Pittsburgh.	WYDD(FM)	Pittsburgh.
WAMO-FM	Pittsburgh.	WOKU-FM	Greensburg.
WEEP-FM	Pittsburgh.	WLOA-FM	Braddock.
WJAS(FM)	Pittsburgh.		

The following standard broadcast stations serve Pittsburgh with a signal of 2.0 mv/m or greater daytime:

Station	*Location (all in Pennsylvania)*
KDKA	Pittsburgh.
KQV	Pittsburgh.
WAMO	Pittsburgh.
WARO	Canonsburg.
WEDO	McKeesport.
WEEP	Pittsburgh.
WJAS	Pittsburgh.
WLOA	Braddock.
WPIT	Pittsburgh.
WTAE	Pittsburgh.
WWSW	Pittsburgh.
WHJB	Greensburg.
WARO	Canonsburg.
WZUM	Carnegie.
WIXZ	McKeesport.
WPSL	Monroeville.
WKPA	New Kensington.

The following FM broadcast stations serve Pittsburgh with a signal intensity of 1.0 mv/m or greater:

Station	*Location (all in Pennsylvania)*
WDKA-FM	Pittsburgh.
KQV-FM	Pittsburgh.
WAMO-FM	Pittsburgh.
WDUQ(FM)	Pittsburgh.
WEEP-FM	Pittsburgh.
WJAS-FM	Pittsburgh.
WKJF(FM)	Pittsburgh.
WPIT-FM	Pittsburgh.
WTAE-FM	Pittsburgh.
WWSW-FM	Pittsburgh.
WYDD(FM)	Pittsburgh.
WNUF(FM)	New Kensington.
WLOA-FM	Braddock.

22. WHJB's consulting engineer submitted data relative to noise level in Westmoreland County; he stated that the present WHJB facility does not provide 2.0 mv/m daytime coverage to all of Westmoreland County. Because of the random and many-time pulsing character of the radio noise, a desired to undesired ratio of at least 30 to 1 was observed to be required before the noise was objectionable to the program content. The proposed operation would result in interference-free service being rendered to all of Westmoreland County.

23. In connection with the above, it is noted that the portion of Westmoreland County in the extreme northeast corner outside the present 2.0 mv/m contour is entirely rural and does not require a 2.0 mv/m signal for primary service. The pertinent part of the county not within the present 2.0 mv/m contour lies in the southwest corner and includes the communities of West Newton, Monessen and North Belle Vernon. West Newton has a 1960 population of 3,982 (Preliminary 1970 pop. 3,647), Monessen has a 1960 population of 18,424 (Preliminary 1970 pop. 15,066) and North Belle Vernon has a 1960 population of 3,148 (Preliminary 1970 pop. 2,912).

24. Spot field intensity and noise measurements were taken by the applicant's consulting engineer in or near the two communities of Seward (pop. 754; Preliminary 1970 pop. 716) and New Florence (pop. 958; Preliminary 1970 pop. 943) located in the northwestern corner of Westmoreland County and in the three communities of Monessen, North Belle Vernon and West Newton in the southwestern corner of the county.

25. However, these spot field intensity measurements are not acceptable for determining the location of a contour or for determining the extent of primary service. Moreover, even assuming that they were

acceptable in this instance, at most of the locations either the signal intensity from the proposed operation would not reach primary service level or it would not be of sufficient magnitude to overcome the noise level under the assumed signal to noise ratio of 30 to 1. Furthermore, in connection with the noise measurements, standards have not been established for interference from atmospheric or manmade electric noise because there is no uniform method of measuring noise or static.

26. According to the applicant's engineer, David L. Steel, several years ago, Lyle Allen, the Chief Engineer of Station WHJB, contacted him and inquired as to whether the area of reception of the station could be increased by such means as letting out the nulls in the present directional antenna pattern, by operating non-directionally with 1,000 watts power, or by increasing power to 5,000 watts. Steel also stated that Allen expressed the station's desire to improve its service to Westmoreland County. Theoretical studies were then undertaken by Steel, and Allen took field intensity measurements on existing stations. It was determined that the present nulls could not be let out as much as theoretical studies indicated, and that non-directional operation with 1,000 watts power was not feasible. Steel then advised Goldberg that it was possible to increase power to 5,000 watts and to increase the signal to the southwest and substantially to the northwest, but that additional field intensity measurements on existing stations would be necessary.

27. Goldberg testified that "signal problems" were caused by the fact that the area in the vicinity of the station had been built up; that water towers had been erected; and that power lines had been installed. He also said that Steel was never specifically instructed to increase the signal intensity in the direction of Pittsburgh. Nevertheless, Goldberg acknowledged that he never asked Steel to remedy these "signal problems" of the present facility at its present power. Instead, he conceded that his concern had been with an increase in power.

C. Separate and Distinct Needs of Greensburg

28. The city of Greensburg is an independent community with a history dating back to about 1770. Since December 10, 1785, it has been the county seat of Westmoreland County.

29. Greensburg is governed by a Commission consisting of a mayor and four councilmen. The municipalities comprising the Greater Greensburg area cooperate on mutual problems such as schools, sewage disposal, fire protection and the like.

30. Greensburg, South Greensburg and Southwest Greensburg have merged with the neighboring Salem Township to form the Greensburg Salem School District. Hempfield Township, together with the small boroughs of Adamsburg, Hunker, Manor and Youngwood comprise the Hempfield Area School District. The two school districts comprise the largest part of the Central Westmoreland Region. The school districts are completely independent of Pittsburgh and have their own distinct needs for a transmission and reception broadcast service—needs which are primarily met by Radio Station WHJB and its sister FM station WOKU-FM.

31. Within the school districts are two senior high schools, four junior high schools and twenty-six elementary schools with a total enrollment of approximately 12,000 students. Plans are underway for constructing another junior high school in Greensburg Salem School District and two new junior high schools in the Hempfield Area School District. The two school districts have united with other districts in establishing the Central Westmoreland Area Technical School at Youngwood, which has an enrollment of about 640 and a faculty of 15.

32. In addition to the public school system, the Roman Catholic Diocese of Greensburg operates a school system consisting of five elementary schools and one high school. The Diocesan High School, while located in Greensburg, serves all parishes in the Diocese.

33. Seton Hill College, a fully accredited liberal arts college for women, has a campus located in Greensburg and an enrollment of about 760, with a full-time faculty of 65. About seven years ago, the University of Pittsburgh, now a state related institution, opened a Greensburg campus offering two years of study. Enrollment now numbers about 900 and is expected to reach 1,200 within the next two years. St. Vincent's College, a liberal arts college for men, with an enrollment of about 1,000, is located about eight miles east of Greensburg. Plans have been formulated to establish Westmoreland County Community College, to begin operation early in 1971 at a site in Greensburg.

34. Greater Greensburg has a combined police force of 34 policemen, with six radio equipped cars and 25 trained auxiliary police officers. There are 20 volunteer fire companies and a municipal garbage collection system. There is a common control system for all police and fire companies. Greensburg is the headquarters for Squadron No. 1 and Troop A of the Pennsylvania State Police.

35. Greensburg is completely separate from and independent of Pittsburgh in respect to civic and fraternal organizations, recreational facilities, cultural activities and the like. The Westmoreland Museum of Art, located in Greensburg, presents a year-round program of cultural events and exhibits. The community has two movie theaters and a civic theater at which summer stock shows are presented in addition to community concerts. The Garden and Civic Center has completed a million dollar facility which houses garden clubs, a little theater group provided with a "little theater" or auditorium, as well as the Greensburg College Club. Westmoreland County has its own symphony located in Greensburg. The symphony was established in 1969 and is made up of residents of the County. The center is available to all civic organizations in the Central Westmoreland County area.

36. Greensburg has its own hospital with 305 beds and an accredited school of nursing. The Greensburg Public Library serves and is supported by Greensburg and the surounding communities, including the Hempfield Area School District. It contains about forty-five thousand volumes and has an annual circulation exceeding one hundred sixteen thousand. The city has three hotels, with over 225 rooms, and five motels. It has its own daily newspaper with a circulation in excess of 27,000.

37. The Greensburg area Chamber of Commerce is independent of Pittsburgh. The Central Westmoreland Chamber of Commerce,

incorporated in July 1965, represents a consolidation of the former Greater Greensburg, Jeannette and Irwin Chambers and serves 324 square miles of the county. It maintains two offices—one in Greensburg and the other in Jeannette. There are over twenty-five benevolent and fraternal organizations in Greensburg and a variety of business, civic and professional organizations. In addition, there are a number of health and welfare, labor, patriotic, veteran, religious and charitable organizations. Presently underway is a program to enlarge and refurnish the Greensburg YMCA at a cost in excess of one million dollars. The YMCA has a membership of 800.

38. Charity drives are completely independent of Pittsburgh. The United Funds of Central Westmoreland, which covers Greensburg, Youngwood and Mt. Pleasant, is one of the nine united funds and community chests in Westmoreland County which since 1966 have been constituent members of the United Funds of Westmoreland County, Inc. The total goal for the United Funds of Westmoreland County, Inc., and its nine constituent funds for 1971 (Fall 1970 campaign) is $910,526. In addition to the local agencies served by the nine constituent funds, funds will be allocated for the use of agencies operating throughout the entire Westmoreland County. The headquarters of the United Funds of Central Westmoreland is in Greensburg, while an office of the United Funds of Westmoreland County, Inc., is also located in Greensburg.

39. Greensburg is not dependent on Pittsburgh for its water, gas, electricity, telephone service or sewage disposal. It receives its water from the Westmoreland County Municipal Authority. The West Penn Power Company, the electrical utility serving many sections of western Pennsylvania, has its central headquarters at Greensburg. The Peoples Natural Gas Company, a subsidiary of Consolidated Natural Gas Company, serves the entire Greater Greensburg area. Also, Columbia Gas Company serves part of the area. Likewise, the Bell Telephone Co. of Pennsylvania has a large sectional office in Greensburg. The Greater Greensburg Sewage Authority operates the sewage disposal facilities. Greensburg has a main post office and is a sectional center, serving 76 offices. The local post office facilities serve 13,800 families. Greensburg is served by the Penn Central Railroad, seven motor freight carriers and four inter-city bus lines.

40. Greensburg is not a suburb of Pittsburgh nor is it a "bedroom community". Industry in Greensburg and its environs is highly diversified and is primarily of the light industrial type. The city is primarily known as a business, banking and commercial center. It is classified by Rand McNally as a principal business center with a well defined tributary area. The estimated population of the trading area as compiled by the Central Westmoreland Regional Planning Commission is in excess of 260,000. The 1963 Census of Business confirms that it is a substantial commercial and industrial center. There are a total of 45 manufacturing plants located in Greensburg, with an annual payroll in 1963 of $10,211,000. The values added by manufacture in 1963 aggregated $15,293,000. Its manufactures include clothing, steel, fabricating metals, machinery, glass and electrical instruments.

Among the major concerns in Greensburg and its environs employing over 100 persons are the following:

Bell Telephone Co. of Pennsylvania	Telephone System.
Crown Corrugated Containers, Inc	Corrugated Cartons.
Gibson Electric Co	Electrical Contractors.
International Paper Co	Corrugated Fiber Board Boxes.
Leonard Bros. Motor Freight	Freight Transportation.
Old Republic Ins. Co	Insurance.
Overly Mfg. Co	Sheet Metal Products.
Overmyer Mold Co	Glass Forming Molds.
Pittsburgh Plate Glass Co	Replacement Windshields.
ITE Circuit Breaker Co	Electric Controls & Switch Gears.
Peoples Natural Gas Co	Natural Gas.
Robertshaw Controls Co	Thermostats & Controls.
Sears-Roebuck & Co	Department Store.
A. E. Troutman Co	Department Store.
Walworth Co	Valves and Fittings.
Westinghouse Electric Co	Transistors & Rectifiers.
Westland Mfg. Co	Women's Sportswear.
Westmoreland Hospital Association	General Hospital.
West Penn Power Company	Electric Utility.

41. According to the 1967 Census of Business, there are located in Greensburg a total of 334 retail establishments with an annual payroll of $10,649,000 and annual sales of $81,823,000. There are 48 wholesale establishments with an annual payroll of $2,767,000 and annual sales of $29,128,000. A total of 199 selected service establishments with an annual payroll of $2,386,000 had annual receipts of $9,652,000. Greensburg ranks first in Westmoreland County in retail and wholesale trade.

42. The continued commercial and industrial growth of Greensburg itself and of Greater Greensburg as a whole is evidenced by a comparison of the 1967 Census of Business with the 1963 and 1958 Censuses as shown by the following summary.

	1958	1963	1967
Retail trade sales:			
Greensburg	$55,461,000	$65,784,000	$81,823,000
Greater Greensburg	69,648,000	86,804,000	104,477,000
Values added by manufacturing:			
Greensburg	8,077,000	15,293,000	(*)
Greater Greensburg	14,917,000	25,612,000	(*)
Wholesale trade sales:			
Greensburg	20,693,000	38,196,000	29,128,000
Greater Greensburg	32,399,000	66,859,000	(*)
Selected services receipts:			
Greensburg	4,704,000	4,905,000	9,652,000
Greater Greensburg	5,803,000	8,133,000	12,754,000

*Not available.

43. According to Standard Rate & Data Service, total retail sales in the Greensburg trading area totalled $358,952,000 in 1960 as compared to $467,192,000 in 1966, a gain of 30.2%. Consumer spendable income in the trading area was estimated at $594,059,000 in 1960 as compared to $777,059,000 in 1966, a gain of 30.8%.

44. The Greater Greensburg Industrial Development Corporation, a non-profit organization governed by a board of eleven trustees, has its headquarters in Greenburg. The Corporation was established to

increase the industrial growth of the Greensburg area and promotes the 92-acre Greensburg-Hempfield Industrial Park. A master plan for the development of the Greater Greensburg Area has been provided by the Central Westmoreland Regional Planning Commission. It sets forth the method for providing neighborhood and community facilities for residential, industrial and commercial areas to meet growth during the next twenty years.

45. Greensburg has four banks with eight offices and one savings and loan association. It has over fifty churches as well as one synagogue and one temple. It has a full complement of lawyers, doctors, dentists and other professional men. As the county seat of Westmoreland County, it houses the county courthouse with the county offices as well as the Court of Common Pleas and the Orphan's Court. It operates two parking garages and three parking lots and is now floating a $1,125,000 bond issue to construct a new 403 space parking garage of the ramp type to be located in Greensburg.

46. Greensburg maintains several parks and recreational areas, together with a public eighteen hole golf course, championship tennis courts, baseball and softball fields, community swimming pool, and indoor ice and roller skating rink and teenage center. The municipal government and the school board support extensive recreation programs with numerous supervised playgrounds and tot lots. There are also two private golf clubs and several privately operated public golf courses in the immediate vicinity.

47. There are located within the city of Greensburg the general offices of the West Penn Power Company, the general offices of the Old Republic Insurance Company, a regional office of the Bell Telephone Company of Pennsylvania and the district offices of several insurance companies. Greensburg is the seat of the diocesan office of the Roman Catholic Diocese of Greensburg.

48. There has also been developed in Hempfield Township a multimillion dollar shopping complex known as Greengate Mall. The Mall is located about two miles west of Greensburg on U.S. Route 30 (Lincoln Highway). The developer of this modern mercantile complex is the nationally known Rouse Company of Baltimore, Maryland. This enclosed type center houses 70 stores with shops facing on a two level enclosed climate controlled mall featuring fountains, benches, etc., and creating an atmosphere for relaxed shopping. Parking facilities surrounding the complex accommodate 2,700 automobiles. Participating in this development is the Joseph Horne Co., one of the nation's foremost mercantile establishments. Also in the mall is a large store of the Montgomery Ward Co. It is estimated that approximately 800 persons are employed in the mall. Under development is an additional wing to the mall to accommodate a large establishment for the J. C. Penny Co., and 12 additional shops. The second tier of the addition will house business and professional offices. Parking will be increased with space for an additional 2,000 cars.

49. Westmoreland County is one of the largest counties both in area and population in Pennsylvania. It embraces an area of 1,023 square miles, ranking eighth in size among the 66 counties in Pennsylvania. According to the 1960 Census, it had a population of 352,629,

ranking fifth in population. Final U.S Census Bureau figures establish the 1970 population as 376,935, an increase of 6.9%.

50. There are 33 municipalities with a population of 2,500 or more in the county, namely:

	Final 1970 census figures
Allegheny Township	6,713
Arnold*	8,174
Derry Borough	3,338
Derry Township	15,902
East Huntingdon Township	7,234
Franklin Township	12,244
Greensburg*	15,870
Hempfield Township*	39,196
Irwin Borough*	4,059
Jeannette*	15,209
Latrobe Borough	11,749
Ligonier Township	6,278
Lower Burrell*	13,654
Monessen	15,216
Mt. Pleasant Borough	5,895
Mt. Pleasant Township	10,830
New Kensington*	20,312
North Belle Vernon Borough	2,916
North Huntingdon Township	29,443
Penn Township*	13,352
Rostraver Township	10,525
Salem Township	6,059
Scottdale Borough	5,818
Sewickley Township	6,735
South Greensburg Borough*	3,288
South Huntingdon Township	6,071
Southwest Greensburg Borough*	3,186
Trafford Borough*	4,288
Unity Township	18,419
Vandergrift Borough	7,873
Washington Township	5,613
West Newton Borough	3,648
Youngwood Borough*	3,057

*The municipalities marked with an asterisk are within the Pittsburgh Urbanized Area. The others are not.

51. Of the foregoing list of municipalities, six are cities, twelve are boroughs, and the remaining fifteen are townships.

52. Westmoreland County is an area of highly diversified industrial activity and has been experiencing continued growth. New industries located in the county and expansion programs of existing facilities have resulted in a population growth from 1950 to 1960 of almost 13%, compared with a statewide average of under 8%. Population growth from 1960 to 1970 was almost 7%. The major manufacturing industries are listed as follows:

Food and kindred products
Apparel and related products
Lumber and wood products
Furniture and fixtures
Paper and allied products
Printing, publishing and allied products
Chemical and allied products
Petroleum refining and allied products
Rubber and miscellaneous plastic products
Stone, clay, glass and concrete products
Primary metal products
Fabricated metal products
Machinery, equipment and supplies
Transportation equipment
Instruments and related products

53. The 1967 Census of Manufacturers discloses a total of 415 manufacturing establishments in the county as compared to 394 in 1958 and 411 in 1963. The annual payroll increased from $214,421,000 in 1958 to $251,904,000 in 1963 and $324,000,000 in 1967. Values added by manufacture increased from $349,916,000 in 1958 to $454,792,000 in 1963 and $564,800,000 in 1967. The number of employees increased from 39,000 in 1963 to 44,500 in 1967. Westmoreland County ranks twelfth

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in the State in number of manufacturing plants, ninth in number of employees engaged in manufacturing and sixth in annual payroll.

54. The 1967 Census of Business-Retail Trade discloses a total of 3,191 retail establishments in the county with total sales of $498,000,000 and an annual payroll of $51,634,000. The county ranked sixth in the State in the number of retail establishments.

55. There were 290 wholesale establishments in the county in 1967 with total annual sales in 1967 of $270,701,000 and a yearly payroll of $18,031,000. Westmoreland County ranks ninth in the State in the number of wholesale establishments, ninth in sales and tenth in yearly payroll.

56. The 1965 Census Report on County Business Patterns (CPB–65–40) shows continued commercial growth. The number of employees in mid-March 1965 jumped to 80,050 as compared to 75,430 in mid-March 1962. The taxable payroll for January–March 1965 increased to $104,510,000 from $95,017,000 in January–March 1962. The total reporting units were 5,257 as compared to 5,139 in 1962. The county ranks eighth in the State in number of employees and fifth in taxable payroll.

57. Real estate within the county had an assessed valuation of $347,328,000 in 1966 as compared to $326,855,000 in 1963 and a market value of $1,279,095,000 in 1966 as compared to $1,186,962,000. The county ranks sixteenth in the State in percentage of urban population (06.7) and twelfth in density of population (344.7 per square mile).

58. The county is also among the most important agricultural areas in southwest Pennsylvania. As of January 1, 1968, there were 2,060 farms with a milk production of $8,319,000. In 1967, total receipts from the sale of crops and livestock were $15,558.000. Milk production in 1967 was 141,000,000 pounds with a value of $8,319,000.

59. Standard Rate and Data Service estimates 1968 consumer spendable income at $898,834,000.

60. As of December 31, 1968, there were eight national banks and five state banks in the county, together with a variety of other financial institutions. There are five hospitals in the county with a total of 1,206 beds.

61. The county also possesses top-ranking educational and cultural facilities. Located within the county are St. Vincents and Seton Hill Colleges, and regional campuses of the University of Pittsburgh and Penn State University. The county has 149 elementary schools, 44 secondary schools and five combined elementary and secondary schools. It also possesses excellent transportation resources. The Pennsylvania Turnpike passes through the area and the county is served by three interchanges. U. S. Routes 22 and 30 traverse the county and there are twelve other well-maintained highways. Sixteen major trucking companies are located in the county. The Penn Central's main line, the Baltimore & Ohio Railway and the Norfolk and Western System all serve the county. The Latrobe Airport, located two miles south of one of the county's most important industrial complexes in the Latrobe and Central Westmoreland area, is embarking on a program of upgrading its facilities. It operates a control tower with full navigational

equipment and a lighted 5,500-foot runway with parallel taxiway. A new $800,000 field is being developed in Rostraver Township.

62. The Westmoreland County Muncipal Authority owns and operates Beaver Dam, which is 7 miles long, has a capacity of 11 billion gallons and furnishes water to a large portion of the county.

63. Westmoreland County also offers year-round recreational resources. Laurel Highlands, Inc., is an official local agency promoting tourism in Westmoreland County and two adjacent counties. The Laurel Hill Ski Area, Fort Ligonier and Bushy Run Park attract thousands of visitors yearly. In addition, the county offers superb fishing, hunting, golfing and resort activities. The county is building six strategically located regional parks to serve urbanized areas.

64. Westmoreland County has its own Congressional District—the 21st Congressional District. The 21st Congressional District also includes a small segment of Fayette County. Likewise, it has its own State Senatorial District—the 39th Senatorial District—and shares the 32nd State Senatorial District with Fayette County. It has five State House of Representative Districts of its own and shares a sixth district with part of Armstrong County.

65. Only three communities in Westmoreland County have standard broadcast stations: Greensburg, Latrobe and New Kensington. The only FM station in Westmoreland County is WOKU–FM, the sister station of WHJB, Greensburg.

66. Written Interrogatories were propounded to all of the standard broadcast stations and FM stations, other than WHJB and its sister station WOKU–FM, which render primary service to Greensburg. Replies were received from the following:

WIXZ	McKeesport, Pennsylvania.
WTRA	Latrobe, Pennsylvania.
WJAC–FM	Johnstown, Pennsylvania.
WAVL	Apollo, Pennsylvania.
WMBS	Uniontown, Pennsylvania.
WJAS–FM	Pittsburgh, Pennsylvania.
WPIT	Pittsburgh, Pennsylvania.
WEEP–AM–FM	Pittsburgh, Pennsylvania.
KQV–FM	Pittsburgh, Pennsylvania.
KDKA	Pittsburgh, Pennsylvania.
WNUF	New Kensington, Pennsylvania.
WYDD (FM)	Pittsburgh, Pennsylvania.

67. The replies to the interrogatories establish that none of these stations render more than minimal service to Greensburg and its environs. None of these stations showed special concern for the needs of Greensburg. All of these stations cater primarily to the needs of the communities to which they are licensed. News originating in Greensburg is broadcast only when it is of general interest. None of the stations solicit or regularly carry public service announcements on behalf of groups and organizations in Greensburg. The same situation applies to religious programming, educational programming, public affairs programming and sport events. Only one station, WIXZ, McKeesport, regularly solicits advertising in Greensburg. Except for station KDKA, Pittsburgh, which occasionally broadcasts Greensburg items

and some political programs, the record establishes that no station located outside of Greensburg is meeting the programming and other needs of Greensburg and its environs.

68. The needs of Greensburg and its environs concededly are being met by the existing programming of WHJB. Radio station WHJB programs primarily for Greensburg, its environs and the balance of Westmoreland County. Local news of Greensburg is broadcast in depth. Public affairs programs are primarily directed to meeting the needs of Greensburg and Westmoreland County. Public service announcements are daily made on behalf of groups and organizations in Greensburg. Religious programming for Greensburg churches and religious organizations is regularly broadcast. Greensburg's school events, as well as sports, are broadcast. Individuals from Greensburg constantly appear on WHJB's programs. Information concerning Greensburg weather, driving conditions and working conditions is broadcast regularly.

69. During political campaigns, the facilities of WHJB are utilized by candidates for local office in Greensburg, by those for Westmoreland County offices, by candidates for the 21st U.S. Congressional District, by candidates for Pennsylvania State Senatorial Districts and State House of Representative Districts which include Greensburg and/or Westmoreland County and by candidates for statewide office. Local candidates which do not represent Greensburg and/or Westmoreland County do not utilize the facilities of WHJB. Free time is made available for local candidates to appear, to present their views and to be interrogated by call-in listeners.

70. WHJB is on the air 126½ hours a week. The breakdown for the composite week used for 1971 renewal applications is as follows:

	Hours	Minutes	Percent of total time on air
News	15	18	12.09
Public Affairs	4	22	3.45
Entertainment	64	34	51.04
Religion	4	43	3.72
Sports	7	31	5.94
Agriculture		35	.46
Other	2	35	2.04

71. No less than twelve local newscasts and headlines are presented on WHJB daily. There are a minimum of seven local newcasts during daytime hours on Monday through Friday, nine on Saturday, and eight on Sunday. When a situation warrants, additional local newscasts are added to the broadcast day. These newscasts are designed to keep the public informed as to matters and events that affect their daily lives. WHJB's news staff endeavors to relate pertinent information concluded or proposed at City Council, school district, township and borough meetings conducted in Westmoreland County. The areas involved are:

Allegheny Township
Arnold
Derry Borough
Derry Township
East Huntingdon Township
Franklin Township
Hempfield Township
Irwin Borough
Jeannette
Latrobe Borough
Ligonier Township
Lower Burrell
Monessen
Mt. Pleasant Borough
Mt. Pleasant Township
New Kensington
North Belle Vernon Borough
North Huntingdon Township
Penn Township
Greensburg
Rostraver Township
Salem Township
Scottdale Borough
Sewickley Township
South Greensburg Borough
Southwest Greensburg Borough
South Huntingdon Township
Trafford Borough
Unity Township
Vandergrift Borough
Washington Township
West Newton Borough
Youngwood Borough
Jeannette School District
Greensburg-Salem School District
Hempfield Area School District
Mt. Pleasant Area School District
Ligonier Valley School District
Greater Latrobe School District
Derry Area School District

In instances where regular WHJB personnel are unable to attend such functions, WHJB utilizes a "news stringer." This is one or more responsible citizens of a particular community or organization who is capable and qualified to give WHJB an accurate account or summation of the business conducted at these meetings. These persons are also used, on occasion, for general news stories (fires, accidents, etc.). Regular daily checks are made with the Pennsylvania State Police barracks in Greensburg; local police stations in Greensburg, South Greensburg, Southwest Greensburg, Jeannette, Latrobe, Mt. Pleasant, Irwin, North Huntingdon Township, Scottdale, West Newton, Youngwood and Ligonier. Calls are also made each day to these hospitals: Westmoreland Hospital in Greensburg, Jeannette Hospital, Monsour Hospital in Jeannette, Latrobe Hospital, Frick Community Hospital in Mt. Pleasant and McGinnis Hospital in Ligonier. On occasion, WHJB is asked to announce such items as street closings. WHJB Radio subscribes to the Associated Press wire service and is affiliated with the Mutual Broadcasting System.

72. From time to time during the winter months, WHJB has been requested by the surrounding school districts to announce school closings. These announcements are made from the time they are received until they are no longer applicable. The following schools and school districts had announcements made over the facilities of WHJB:

Jeannette Public Schools
Greensburg-Salem Public Schools
Hempfield Area Schools
Mt. Pleasant Area Schools
Ligonier Valley Schools
Greater Latrobe Public Schools
Derry Area Schools
Penn Trafford Schools
All 14 Schools in the Norwin School District
Franklin Area Regional Schools of Murrysville
Greensburg Central Catholic
Tindell Christian School.... (Kindergarten and Elementary)
Special Education Schools of Greensburg and Irwin
Murrysville Presbyterian Kindergarten School
St. Boniface Penn School

St. Regis School of Trafford
Delmont Women's Club Kindergarten
Valley School of Ligonier
All Southmoreland Schools
Cathedral Schools of Greensburg
St. Bernadine—St. Joseph of Mt. Pleasant
Transfiguration and Visitation Schools
Youghiogheny School District
Our Lady of Grace Nursery School on Mt. Pleasant Road
St. Agnes and Immaculate Conception, Irwin
St. Bartholomew of Crabtree
St. Simon and St. Jude Schools of Blairsville
St. Paul's School, Greensburg
Seton Hill Day Care Center . . . Mt. Thor Road
Seton Hill Nursery School
Holy Cross School of Youngwood
St. Joseph's Kindergarten and Elementary School of Derry
St. Bruno's School of Greensburg
University of Pittsburgh . . . Greensburg Campus . . . Day and Night School
Central Westmoreland Area Technical School in Youngwood . . . Day and Night
Westmoreland Business School
Greensburg Community Nursing Association (Will not be able to make calls)

73. Other regularly scheduled programs are utilized primarily for Greensburg, its environs and Westmoreland County. The daytime programs include:

COUNTRY MUSIC TIME—5:30 a.m. to 9:25 a.m., Monday through Friday—6:00 a.m. to 9:00 a.m., Saturday—Hosted by "Cowboy" Phil (Reed), this has been a regularly featured program of country and western music for the past 32 years. The program is specifically designed to meet the needs of the more than 2200 farms in Westmoreland County. Along with lively music, weather information vital to local farmers is given at regular 10-minute intervals. The weather information is supplied by the United States Weather Bureau in Pittsburgh. This information is in the form of a general weather forecast specifically for the Central Western Pennsylvania area. The forecast is then supplemented with temperature, humidity, barometric pressure, wind direction and velocity readings for the Westmoreland County area. For this purpose, WHJB has acquired a "weather station" apparatus approved by the United States Weather Bureau. Current time checks and temperature readings are given on an average of one every five minutes.

A daily 5-minute show is presented at 6:05 a.m. on "Country Music Time" by the Westmoreland County Agriculture Extension Service office in Greensburg. The program is presented Monday through Friday and features the Westmoreland County farm agent, Mr. Joseph Thurston, or his assistant, Mr. Bill Kelly or his associate, Mr. Dale Jackson. Mr. Jackson also conducts a weekly 10-minute "4-H" program at 8:50 a.m. each Saturday. The program consists of news and interviews with 4-H boys and girls of the Westmoreland County area. These two farm shows are produced and recorded in the WHJB studios.

HOME HINTS—9:25-9:30 a.m., Monday through Thursday—Two members of the Westmoreland County Agriculture Extension Office in Greensburg, Mrs. Pat Long and Miss Carol Krupp, present this 5-minute program. It is aimed specifically at the Westmoreland County

housewife. The program supplies her with the latest news and techniques concerning canning, food and household purchasing and other useful information.

SOCIAL SECURITY PROGRAM—12:55–1:00 p.m., Friday—This show is prepared and presented by the Greensburg Social Security office.

TRADING POST—9:30–9:45 a.m., Monday through Friday—The Trading Post, hosted by Davey Tyson, affords WHJB listeners a vehicle for buying, selling or trading items of a non-business nature. The Trading Post cannot be utilized by a business establishment to sell its merchandise. Items are sent to the station by mail. They are allowed 3 items for sale, trade, purchase or give-away. The "3-item" rule was established to afford as many participants as possible for a single show. A fee of one dollar is charged for three items for three days, or until the item or items have been bought, sold, traded or otherwise disposed of. The one-dollar fee was instituted to assure the sincerity of the participants, and to help defray the cost of handling the mail.

THE DAVEY TYSON PHONE PARTY—9:45–12:00 Noon and 1:00–2:30 p.m., Monday through Friday—This is a telephone conversation program that has been expanded five times since its inception in 1964, the latest expansion being in January of 1970. This program allows the public an individual "Sounding Board" for local or national issues or just general information. The announcer, Mr. Tyson, merely serves as a moderator and does not, as a rule, take sides in any issues. The subjects on the program are governed by the participating public. The callers are supplied with four separate telephone lines serving four separate and distinct locations: Greensburg, Pittsburgh, Jeannette and McKeesport. The calls are not concentrated in these or any one particular area, but come from all communities in Westmoreland County and parts of Allegheny County and even many from the fringe areas of adjacent counties. The subjects range from cooking and canning hints and their problems and solutions to local and world affairs.

Of a more serious nature was the topic of a proposed community college system for Westmoreland County. The two majority county commissioners advocated the community college for the county while the minority commissioner stood in opposition. The minority commissioner was in favor of presenting the proposal to the voters by way of a referendum. The citizens of Westmoreland County appealed to WHJB and the Phone Party in particular to present both sides in the case for discussion and if possible to invite responsible members to answer the public's questions. An invitation was extended to both the majority and minority faction. The majority commissioners declined the opportunity but the minority commissioner accepted. The "Association for Concerned Taxpayers" (ACT) Chairman, Mrs. Dorothy Shope, was also asked to appear on the Phone Party at another date to present the Association's views and arguments for the referendum. She also accepted. The position of WHJB and in particular the Phone Party was that of a medium, and did not show partiality.

On another occasion, during the summer of 1970, the Greensburg Water Authority informed its customers that their water rates were being increased by 38%. The Phone Party listeners used the Phone Party as their personal sounding board to register their dissatisfaction.

At other times during the past year, officials of two minority religions were invited to answer questions of the Phone Party callers. These were the Jehovah Witnesses and the Mormon Church of Greensburg.

MUSIC ON THE SQUARE—2:35–3:00 p.m., Monday through Friday—"Music on the Square" is a unique collection of records not generally heard on radio today. These records are from the private collection of Davey Tyson and feature, as an example, such well remembered personalities as: Al Jolson, The Ink Spots, The Mills Brothers, Kenny Baker, Beatrice Kay, The Three Suns, Sophie Tucker, Tommy Dorsey, etc. Along with the music, Davey Tyson interjects interesting conversation and information for the busy Westmoreland County housewife, weather and time checks.

COMMUNITY BULLETIN BOARD—2:45 p.m., Monday through Friday—This is a three to five minute program dedicated to announcements pertaining to meetings, dinners and fund raising organizations of a non-profit nature. The announcements are brought to the station or sent in by a member of the particular organization. No charge is made by the station for the service. The announcements come from organizations in every community of the county. In one typical Community Bulletin Board, September 14, 1970, the following announcements were made:

The Christian Businessmen's Committee of Greensburg are holding a dinner meeting Tuesday evening, September 15th, at 6:30 p.m. at the Greensburg Garden and Civic Center, featuring Mr. Donald F. McKechnie. The public is invited to attend. For more information: Phone 837–4578.

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The Greenridge Garden Club of Irwin will hold a Flower Show entitled "It Happens Every Fall" starting at 3:00 P.M. Saturday, September 19th at the Greengate Mall Community Room in the lower level. Entries for the horticulture section may be entered from 9 until 11 A.M.

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Fifteen courses will be offered by the Forbes Trail Area Technical School, located at Beatty and Cooper Roads in Monroeville. Registration for these adult evening classes will be taken from 7 to 9 P.M. September 21st and 22nd. For more information: Phone 271–5810.

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The Charter Oak United Methodist Church will hold a Country Fair on Saturday, September 19th from 12 noon to 6 P.M. at the church located 4 miles east of Greensburg along Route 30.

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St. Vincent Parish Parents Club will hold a sub sale at The Grove, Wednesday, September 16th. $1.00 orders will be taken by calling: Phones: 539–1336—539–9597—or 539–8677.

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The Rosary Altar Society of the Holy Trinity Church in Ligonier will hold their fall rummage sale Saturday, September 19th from 9 A.M. to 1 P.M. at the Old School Hall on Church Street.

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The Indiana Coin Club has scheduled a meeting for Saturday September 19th starting at 10 A.M. and Sunday, September 20th, starting at 9 A.M. at the Rustic Lodge in Indiana. There is ample free parking, and food is obtainable on the premises.

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Unit I of the Westmoreland Hospital Association will hold their annual Antique Show and sale September 18th, 19th, and 20th. (This coming Friday, Saturday and Sunday) starting at 1 P.M. at the Mountain View Inn.

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Renovations, including a cleaning of the Dome and spanking new paint job on planetarium galleries will make it necessary for Buhl Planetarium and Institute to close its doors to the public from September 14th through the 18th. It will reopen September 19th with the latest sky drama, "Creation to Cataclysm". Take in numerous exhibits on space and science and see an updated version of the 15 year old mural "Earth and Comet From the Moon."

NOON TUNES—12:15–12:30 P.M., 12:45–1:00 P.M., Monday through Friday—Entertainment for the Lunch-Time set. Records, Time and Weather.

THE CHRIS BRINKER SHOW—12:30–12:45 P.M., Monday through Friday—A program devoted to the woman of the house hosted by former Mrs. Pennsylvania, Chris Brinker. The show is of local origin and includes cooking, buying and beauty tips. Frequently, on an average of twice a week, Chris features a special guest from area organizations to discuss topics of special importance or interest. As examples, recent quests and topics include: Mr. Fred Brown, Associate Superintendent of the State Regional Correction Institution in Greensburg. Discussion centered around the "Prisoner Work-Release System." Mr. Ted Konrad, Principal of the West Hempfield Junior High School, on "Sex Education in the Schools"; The Westmoreland County and Wider Drug Abuse programs (2) with Mr. Albert D'Amico, Supervisor of the Southwestern Pennsylvania State Bureau of Drug Control, and Mrs. Alice Giglio, Supervisor of the Counciling Services of the Penn-Trafford School District; Mr. Robert Joyner, District Commander of the American Legion; Mr. Fred Servey, Public Education Supervisor of The Pennsylvania State Game Commission, on "Family Camping"; and on a National scope, Mr. Arthur Galway, Vice President for the March of Dimes, New York, on "The Rubella Vaccine."

HOMEWARD BOUND—3:05–6:00 P.M., Monday through Friday—A program of good-listening, up-tempo music interspersed with weather information, news and time checks for the home audience and the homeward bound worker.

EVENING NEWS DIGEST—6:00–7:00 P.M., Monday through Friday—This is a round-up of all the day's happenings: Local, area, and world news, business news and sports. The Mutual Network also presents a fifteen minute commentary on the news with Fulton Lewis (6:30–6:45). The final fifteen minute portion of the evening news digest is reserved for either special interviews or a further in depth study of local and area news and events. As an example, an interview was conducted with Mrs. Joseph Bubenheim, Executive Director, on

the opening of the new Greensburg Y.W.C.A., on Wednesday, September 10, 1970.

BALKAN GAITIES—1:05–2:00 p.m. Sunday—Two programs of Polish and Slovenian Music. The dominant ethnic group in Westmoreland County is of Slovenian descent. Regular time checks and weather information are also included in the program.

THE AMERICAN LEGION AUXILIARY—2:05–2:20 P.M.—The last Sunday of each month. A program of interviews and information concerning the American Legion Auxiliary in Westmoreland County. The program originates in the WHJB Studios.

74. The WHJB Sports Department broadcasts high school football every Friday and Saturday nights from one of the area high school stadiums. These broadcasts are done live. The home teams represented in these broadcasts are: Greensburg Salem, Hempfield Area, Jeannette, Latrobe, Norwin, Mt. Pleasant, Derry Area and Greensburg Central Catholic. Basketball games are broadcast every Tuesday and Friday nights with the same above mentioned home teams.

75. Through the cooperation of the Greensburg City Council of Churches, the Catholic Diocese of Greensburg and other independent churches and church groups, WHJB presents a wide scope of religious programs, services and news for Central Westmoreland County. The Greensburg Catholic Diocese is the third largest diocese in the State of Pennsylvania, encompassing a four-county area: Westmoreland County, Fayette County, Indiana County and Armstrong County. The Greensburg Catholic Diocese has a total population of 220,486. Westmoreland County's Catholic population is 134,000. The following programs are produced for WHJB by the Greensburg Catholic Diocese:

9:20–9:35 A.M., Sunday—"Bishop Connare" (Commentary and editorial)
10:15–10:30 A.M., Sunday—"Catholic Forum" (Program on Catholic life)
6:35–6:50 P.M., Sunday—"Catholic Accent" (Catholic religious news)

The Greensburg Council of Churches consists of approximately 12,000 resident and non-resident members of age twelve and up. Sixteen member churches broadcast their Sunday morning church service over WHJB in rotation. These churches are:

The First Presbyterian Church of Greensburg
The First Lutheran Church of Greensburg
The First Methodist Church of Greensburg
The First Church of Christ
The First United Church of Christ
The First Baptist Church of Greensburg
The Third United Church of Christ
The Trinity United Church of Christ
The South Greensburg Methodist Church
The Zion Lutheran Church of Greensburg
The United Presbyterian Church of Greensburg
The Westminster Presbyterian Church of Greensburg
The Church of the Brethren of Greensburg
The Otterbein Evangelical United Brethern Church
Saint Michaels Orthodox Church
The Christ Episcopal Church of Greensburg

In addition, a number of other religious programs sponsored by Greensburg churches are regularly broadcast.

76. In a typical week of broadcasting, WHJB dedicates 20 minutes per day to regularly scheduled public service announcements. Wherever possible, these announcements are dealt with on a local level, such as the Westmoreland County Chapter of the Mental Health Association; Westmoreland Tuberculosis and Health Association; Greensburg Fire Department Blood Raising Campaign; Jeannette Fire Department Circus, etc. Many times the announcements are recorded by responsible officials of the agency concerned. If the public service announcement is of a national campaign nature, such as the National Heart Association, then, wherever applicable, a local tag line is added. Using the week of September 14, 1970, as a typical week, the following public service announcements were aired:

Twenty (20) one-minute public service announcements per day. These public service announcements are scheduled from 5:30 a.m. to 12:00 midnight, the regular broadcast day, on a rotating basis—two announcements per day.

1. **The American Heart Association**
2. **The American Cancer Society**
3. **President's Council on Alcoholism**
4. **Westmoreland County T.B. Association**
5. **The United Jewish Appeal**
6. **Westmoreland County United Fund**
7. **Civil Defense**
8. **Save the Children Federation**
9. **The Pennsylvania State Police (Greensburg Troop A)**
10. **Radio Free Europe**

As found above, also of a public service nature is the daily Community Bulletin Board. This 3 to 5 minute program consists of church, social or any other non-profit organization announcements pertaining to dinners, meetings, fund raising campaigns, etc. This is a regularly scheduled program that is aired at the same time every day during peak traffic times.

77. Aside from its regularly scheduled public service announcements and programs, WHJB very often utilizes the short "drop-ins" or station "I.D.'s." These are usually used during a saturation public service campaign, such as blood donation campaigns, chest X-ray campaigns, etc. On certain occasions, such as National Hospital Week, Greensburg and Westmoreland County administrators are invited to the station for a round-table discussion program. These are usually 15 minute programs and may be featured as often as one per day during the campaign.

78. WHJB has received many unsolicited letters of commendation from Greensburg and Westmoreland County educational and religious institutions and civic and philanthropic organizations. These include:

Westmoreland County Heart Association
Hempfield Area Senior High School
Westmoreland County Chapter, American Red Cross
Central Westmoreland Chamber of Commerce
The Greater Greensburg Jaycees
Diocese of Greensburg
Greensburg Air Scouts Squadron No. 403
St. Vincent College
Greensburg Fire Prevention Bureau
Salvation Army, Greensburg Area Citadel
Westmoreland Children's Aid Society

Mount Pleasant Joint School System
Churchmen of Holy Trinity Church
Westmoreland Tuberculosis and Health Association
National Foundation—March of Dimes—Westmoreland Chapter
Greensburg District Office, Social Security Administration
Westmoreland-Fayette Council, Boy Scouts of America
League of Women Voters of Greater Greensburg Area
Seton Hill College
Animal Care of Westmoreland County
Westmoreland County Branch, Pennsylvania Association for the Blind, Inc.
United Cerebral Palsy of Western Pennsylvania, Inc.
Fort Ligonier Memorial Foundation, Inc.
Jehovah's Witnesses
Mayor, City of Greensburg
School District of City of Jeannette
Latrobe Volunteer Fire Department
Young Men's Christian Association of Greensburg
Belle Vernon Rotary Club
Westmoreland County Community College
American Cancer Society, Westmoreland County Unit, Greensburg
United Mine Workers, District 8, Greensburg
Westmoreland County Association for Retarded Children, Inc.
National Multiple Sclerosis Society, Allegheny District Chapter
Lion's Club, New Alexandria
Myasthenia Gravis Clinic of Western Pennsylvania, Mercy Hospital
The National Secretaries Association, Laurel Chapter, Latrobe
The Westmoreland County Museum of Art
Mutual Aid Ambulance Service, Inc., Greensburg
The Salvation Army, Inc., Jeannette
Republican County Committee, Westmoreland County
Greensburg Salem High School Band
The Arthritis Foundation, Western Pennsylvania Chapter
Borough of Scottdale
Borough of Irwin
Charnesky-Vaccare American Legion Auxiliary Unit 981, South Greensburg
Westmoreland Girl Scout Council, Inc., Greensburg
Lion's Club of Jeannette
Rolling Rock Hunt Racing Association, Inc.
Junior Achievement of Central Westmoreland, Greensburg
United Funds of Westmoreland County
Westmoreland Community Concerts, Inc.
Child Health Association of Sewickley
Project H.E.L.P., Greensburg
First Lutheran Church
Westmoreland County Sheltered Workshop, Inc., Greensburg
Rotary Club of New Kensington
United States Jaycees
I-T-E Imperial Corporation, Greensburg Division
The Greensburg Salem Band Parents Association
The George Washington Motor Hotel, Washington, Pa.
Rolling Rock Club Fisheries, Laughlintown

79. As found above, the present programming of Station WHJB is directed primarily at serving the separate and distinct needs of Greensburg, its market and trading area, and of Westmoreland County as a whole. It is designed to meet the educational, industrial, political, civic, religious and other needs. In designing and presenting these programs, WHJB has received the full cooperation of Greensburg and Westmoreland County civic, political, religious, educational, and other leaders.

80. WHJB represents that if the application for increased power is granted, WHJB's programming will continue to be designed to

satisfy primarily the needs of Greensburg and of Westmoreland County as a whole. In view of the large number of stations located in Pittsburgh and the distance of Greensburg from Pittsburgh, and as a result of its ascertainment of community needs in the gain area, WHJB claims that it will continue primarily to cater to the needs of Greensburg and Westmoreland County, but will expand certain programs so as to include guests and comments from various leaders and spokesmen from the gain area. It also intends to expand its total Westmoreland County news coverage.

81. Station WHJB derives its advertising revenues from these sources:

Local: That which is purchased directly by locally owned and operated businesses who deal directly with the station. There are a few exceptions of locally owned and operated businesses which have secured the services of an advertising agency. The great bulk of local advertisers are located in Westmoreland County or at the periphery of Westmoreland County.

Regional: That which is placed through an advertising agency in Pittsburgh by firms that are based in Greater Pittsburgh, or which sell products or services in Westmoreland County. The great majority, if not all, of these firms have branches or agencies in Westmoreland County, and the advertising is placed primarily for the benefit of these branches or agencies.

National: That which for the most part is purchased on the Mutual Network and based on a national level, rather than for the Pittsburgh or Greensburg area directly. No advertising revenue is from the Mutual Network.

82. Station WHJB's estimated revenue for 1970 was $340,000 broken down as follows:

		Percent
Estimated local revenues:		
Greater Greensburg	$102,000	30
Other areas in Westmoreland County	125,800	37
Pittsburgh	10	
Other areas outside of Westmoreland County	30,600	9
Estimated regional revenues:		
Pittsburgh	51,000	15
Other areas	25,500	7.5
Estimated national revenues	5,100	1.5
Total estimated revenues	340,010	100

83. Actual revenues for 1970 were $349,000.

84. The following is a breakdown of the station's estimated annual revenue in event of grant of the application to increase power:

		Percent
Estimated Local Revenues:		
Greater Greensburg	$112,200	30.3
Other areas in Westmoreland County	138,380	37.4
Pittsburgh	10	
Other areas outside of Westmoreland County	33,048	9.0
Estimated regional revenues:		
Pittsburgh	54,060	14.6
Other areas	27,030	7.3
Estimated national revenues	5,202	1.4
Total estimated revenues	369,930	100

85. The total estimated cost of operation of Station WHJB in the event of the grant of application to increase power is as follows:

Technical expense	$42,000
Program cost	82,500
Selling, general, and administrative expenses	205,000
Interest expense	3,200
Total estimated annual cost of operations	332,700

86. The bulk of WHJB's advertising revenues presently are derived from local advertisers, i.e., advertisers located in and doing business in Greensburg and/or Westmoreland County. Local advertising is solicited directly by the sales staff of WHJB. WHJB employs the services of a Pittsburgh based station representative firm known as Gateway Reps. This firm, in conjunction with the WHJB sales staff, is in charge of the solicitation of regional advertising. The policy of WHJB has always been to restrict regional advertising to those accounts which have outlets in the Greensburg marketing area or to products sold in the Greensburg market. This policy has been dictated in major part by a desire to protect the local advertisers who form 75 to 80% of the WHJB account list.

87. Pertinent examples of the regional accounts solicited by WHJB are the following:

Mellon National Bank—Offices in Greensburg (3), Latrobe (2), New Stanton (1), Ligonier (1).

Horne's Department Store—Suburban retail outlet in the Greengate Mall, Greensburg.

Bards Dairy Land—Retail outlets in Greensburg and Jeannette.

Dollar Savings Bank—Outlets in Greensburg and Jeannette.

Brookline Bank—Office in Derry.

A & P Food Markets—Outlets in Greensburg, Jeannette and Norwin Shopping Center (Irwin).

Kroger Food Store—Outlet in Greensburg.

Moore, Leonard & Lynch—Stock brokerage outlet in Greensburg.

Pittsburgh Zone Ford Dealers Association for Westmoreland County Dealers. Also, Chrysler Products Dealer, General Motors Products Dealers, American Motors, and Foreign Auto Products.

Dairy Queen Association of Western Penna. Outlets in Westmoreland County.

Duquesne, Stoney's Koehler, Schmidt's, Ballantine and other beers all distributed by local distributors.

Peoples Natural Gas Company—serving consumers in Westmoreland County.

Braun's Bread—Distributed in stores and supermarkets throughout Westmoreland County.

Mountain Valley Mineral Water—Distributed in Greensburg through local distributor.

Winky's Retail restaurant outlets in Greensburg and Jeannette.

88. WHJB's regional sales representative has advised WHJB that because of its location as a practical matter it would not be considered in the Pittsburgh market. The WHJB format, with its strong local flavor, is not conducive to obtaining substantially increased regional revenues. Based on the WHJB format and the format that it proposes in the event of a grant, there would be some increase. The anticipated annual additional regional revenues from Pittsburgh based advertisers is estimated at $3,000.

89. If the station operates with an increase in daytime power as proposed, it intends to continue its present advertising policies. The growth of the Greensburg-Central Westmoreland area is such that

WHJB intends to continue the sale of this trading area as its major emphasis. With the improvement of service to this area and as it expands and increases in area and importance, it is anticipated that accounts will come from a broader base in Westmoreland County. It is anticipated that a new market for advertising revenues would open up in the West Newton, Monessen and Belle Vernon areas in the southwest corner of Westmoreland County and the Arnold, New Kensington and Lower Burrell areas in the northwest corner of the county. Percentage-wise, local advertising revenue is estimated to increase about 10%, while regional revenues are estimated to increase about 6%. The estimated increase in national revenue is insignificant. The basic principle which WHJB intends to follow is that of account solicitation where the retail outlets or products distribution are a factor in the Greensburg trading area.

90. Examples of WHJB's promotional advertising material show that the current emphasis on sales is Greensburg, the Greensburg marketing area and Westmoreland County. No effort is made to attract advertisers for the Pittsburgh market. If the increase in power is granted, the present advertising policies are expected to be continued.

91. Station WHJB with its present power covers the major part of Westmoreland County and programs primarily for Greensburg and secondarily for Westmoreland County. Its advertising revenues are derived not only from Greensburg, the station's location, but from the entire Greensburg trading area. Issue (1)(d) as framed refers to the "projected sources of the applicant's advertising revenues within its specified station location" as compared with its projected sources from all other areas. In the light of this proceeding, which involves not a license for a new station but merely an application for an increase in power, it seems apparent that the Commission is interested in ascertaining whether WHJB can support its proposed operation with revenues from its present primary service area. The record establishes that this can be done. The advertising revenue from Greensburg and Westmoreland County is and will continue to be sufficient to support the WHJB operations.

Ascertainment of Problems, Needs and Interests in Gain Area

92. Political, civic, ethnic, educational, labor and other leaders, as well as members of the general public in the gain area were interviewed. In excess of 125 representative community leaders were interviewed by management-level employees of WHJB. In addition, over 60 members of the general public from all walks of life, but principally from Pittsburgh, were interviewed. As far as Westmoreland County is concerned, community leaders not only in Monessen, North Belle Vernon and West Newton were interviewed, but also those in Arnold.

93. All persons interviewed were asked not only about the significant needs and problems of the communities in which they resided, but also were asked to what extent stations located in their respective communities were meeting the needs and problems of the communities as well as the specific needs of the organizations they belonged to. Their views were also solicited as to the type of programming that would assist in meeting these needs and problems.

94. In addition to the specific needs, interests and problems of particular communities, a Westmoreland area-wide need frequently mentioned was the need for a communication media which served the entire county. There was a desire expressed for more local and county news. In West Newton, particularly, the community leaders complained that they were in a fringe reception area and are not being adequately served by any radio station.

95. The persons interviewed felt that by and large the Pittsburgh stations and other stations serving the proposed gain area were doing a fairly adequate job and were contributing to a diversity of programs to assist in meeting the needs and problems of the gain area. The consensus of opinion was that there were sufficient stations in the gain area to meet the needs of the gain area, but that a station in Greensburg could assist by a call-in program, by expanded news coverage and by good entertainment.

96. After the survey was completed, the results of the survey were discussed, evaluated and analyzed at staff meetings of WHJB, consisting of the President and General Manager, the Assistant to the President, the program director and the acting news director. The conclusion was reached that the specific needs and problems of Pittsburgh and the balance of the gain area outside of Westmoreland County could best be met by stations presently located in Pittsburgh and in other communities in the gain area. While WHJB should make its facilities available for such public service programming as organizations in Pittsburgh and the balance of the gain area may request, it was concluded that there was no need to actively seek out organizations located outside of Westmoreland County, as there were sufficient broadcast stations in Pittsburgh and other communities in the gain area to meet the needs and requests of these organizations.

97. It was also concluded that certain specific needs and problems of Pittsburgh and the balance of the gain area outside of Westmoreland County should be met by a Greensburg station as follows:

A. While WHJB will continue primarily to cater to the needs of Greensburg and Westmoreland County, it concluded that the maintenance of its daily "call-in" program would assist in meeting the needs of Pittsburgh and the balance of the gain area. With the direct telephone lines being strategically placed as they are, it will afford more people the opportunity to call in and discuss the needs and problems of their particular area. This "call-in" program, The Davey Tyson Phone Party, is described in paragraph 74. WHJB proposes to include in this program invitations to various leaders and spokesmen in the proposed gain area to appear as guests on the program, as it is presently doing in its primary service area. These leaders will be invited to discuss the specific needs and problems of their community, as well as the area as a whole.

B. WHJB proposes to follow the same procedure with respect to The Chris Brinker Show, also described in paragraph 74 above. As in The Davey Tyson Phone Party program, WHJB proposes to invite various leaders and spokesmen from the proposed gain area to appear as guests on The Chris Brinker Show.

C. In the event the increase in power is granted, WHJB also proposes to expand its news coverage so as to include significant events which may occur in the gain area. Primary emphasis, however, will continue to be placed on Greensburg and Westmoreland County news. At present the station has hourly broadcasts of local news. The survey indicated that there were certain underserved news areas, such as southwest Westmoreland County and the Arnold area in the northern part of the county. People in areas such as West Newton, North Belle Vernon, Monessen and Arnold, as well as others, stressed the lack of local news on any of the stations now serving their areas. They expressed a desire for news of happenings of the county government and WHJB feels, since it is located in Greensburg, the county seat, it could best serve this need. Also, people who work in Greensburg but live in the proposed gain area indicated they are interested in county news but are unable to obtain it at the present time. Westmoreland County, as of now does not have its own news media that all county residents can tune into and be brought up-to-date on the news happenings of the county. WHJB feels by having total county coverage it can create a better understanding between government (county and local) and the general public. WHJB therefore proposes to expand its newscasts so as to report even more fully news of Westmoreland County, and particularly, the activities in Westmoreland County which affect all areas in the county. Attention will also be given to news from the smaller communities which are adjacent to Westmoreland County and presently suffer from lack of adequate reporting. WHJB will continue to report major Pittsburgh news stories but in view of the large number of stations which are located in Pittsburgh, it does not propose to cover local Pittsburgh events. WHJB proposes to obtain news from the Westmoreland gain area by telephone calls to police stations, fire departments and hospitals, as well as utilizing "news stringers" and its Associated Press wire service.

D. The results of the survey also established there was one area-wide problem which WHJB feels could be met by the station, and that is in the area of employment opportunity. In recognizing the need for employment opportunities for the residents of the entire service area, WHJB proposes to initiate a program wherein job opportunities will be made public. This will be a 15-minute program entitled "Jobs Unlimited," to be broadcast each Saturday from 9:05 a.m. to 9:20 a.m. The program will feature a member of the employment or promotional staff of various industrial, research and clerical concerns from the entire service area. The representatives will be invited to either come to the WHJB Studios or will be given the opportunity of presenting their particular needs by telephone. The representatives will express their respective job opportunities with regard to qualification, training, salary, benefits, etc. The listeners will then be given further information on the procedure for filing an application for employment, securing an interview, or further inquiry. It is hoped that by this means persons with particular skills will be given the opportunity to find needed employment, or better working opportunities in line with their particular skills and needs.

109-026—73——15

Conclusions

1. Based upon the findings made herein it is clear that WHJB, Inc., has adequate resources to meet the financial needs of its proposal. Accordingly, it is concluded that WHJB is financially qualified to construct and operate its proposed station.

2. WHJB's proposal, if granted, will result in service to the city of Pittsburgh. As presently constituted. WHJB does not penetrate the city of Pittsburgh with its signal. If WHJB's application is granted its 5mv/m daytime contour will cover all of Pttsburgh. According to the 1970 Census, Greensburg has a population of 15,870 and Pittsburgh has a population of 520,117. Under the Commission's *Policy Statement in Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 FCC 2d 190 (1969), there is a presumption, therefore, that if WHJB's application should be granted it would serve Pittsburgh rather than its assigned community, Greensburg. Under the Commission's policy this presumption is rebuttable. To rebut the presumption WHJB in this proceeding offered evidence as to the distinctive needs of Greensburg which it proposes to serve; the advertising revenues which the station obtains from Greensburg and its immediate surrounding suburban area; and the independence from its nearby large city neighbor, Pittsburgh. WHJB's purpose for seeking an increase in power is to improve its service to its suburban community.

3. The record establishes that Greensburg has separate and distinct transmission and other programming needs. These needs are distinct and separate from those of Pittsburgh. It has its own political, educational, civic, industrial, business, religious and other needs. These separate and distinct needs are accentuated by the distance separating Greensburg and Pittsburgh, by Greensburg's status as the county seat of Westmoreland County, and by its own extensive trading area. It cannot be considered either as a residential or a "bedroom" type community or a suburb of Pittsburgh.

4. The record further establishes that WHJB presently is providing a local transmission facility for Greensburg. The answers to interrogatories propounded to other stations rendering primary service to Greensburg establish that no other station is showing any special concern for the needs of Greensburg. None of the stations, other than WHJB and its sister FM station WOKU–FM broadcasts on a regular basis any special programs directed to Greensburg. None of them has any newsmen assigned to Greensburg. No other stations cater to or meet the needs of Greensburg and outside stations are not now serving the separate and distinct needs of Greensburg.

5. If the proposed increase in power is granted, WHJB undertakes to continue to meet the transmission, programming and other needs of Greensburg and it realistically will meet its obligation primarily to serve Greensburg as an outlet. The record demonstrates that

WHJB has consistently considered the needs of Greensburg and Greater Greensburg as its primary area of responsibility and that it has met these needs. The record warrants the conclusion that reliance may be placed on its assurances and representations that if this application is granted it will continue to operate as a Greensburg station, that it will continue to meet the specific programming needs of Greensburg, and that it will continue to deem its primary responsibility to be to Greensburg.

6. The record establishes that WHJB's advertising revenues from Greensburg and its trading area will be adequate to support its operation with increased power. It will not be necessary to generate Pittsburgh local revenue. The projected source of revenue from local Pittsburgh advertisers is minimal. There may be an increase in revenue from regional advertisers who have their main offices in Pittsburgh and branches or sales agencies in the Greensburg trading area, but if this revenue does not materialize, WHJB's revenues from Greensburg and the Greensburg trading area will be adequate to support its operation at increased power.

7. The record establishes that the survey of community needs for the gain area conducted by WHJB conformed to the standards prescribed in the recently adopted *Primer*. WHJB consulted with community leaders who could be expected to have a broad overview of community problems and with members of the general public. The record establishes that by this survey WHJB has determined the problems which exist in the gain area and with which it should deal in fulfilling its secondary responsibility to that area should its application for increase in power be granted. WHJB, in its exhibit, has listed the significant problems, needs and interests in the gain area disclosed by its survey.

8. WHJB has evaluated the information received as to the problems of the gain area. Consistent with its primary obligation to meet the needs and interests of its city of license—Greensburg—WHJB has formulated a program schedule which has taken into consideration the needs of the gain area which merit treatment by it.

9. Based on the entire record, it is found and determined that WHJB has met the standards prescribed in the *Primer*, that its efforts to ascertain community problems, interests and needs of the gain area and its method of contacting representative community leaders and members of the general public in the gain area were adequate; that it has established an awareness of the needs, interests and problems of the gain area; that it has formulated secondary programming for the gain area consistent with its primary obligation realistically to continue to serve the city of Greensburg.

10. Upon the basis of the entire record in this proceeding, and the findings and conclusions hereinbefore set forth, it is concluded that a grant of WHJB's application will serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the application of WHJB, Inc., to increase its daytime power (BP–17962) IS GRANTED, subject to the following condition:

Before program tests are authorized, permittee shall submit new common point impedance measurements and sufficient field intensity measurement data to clearly show that the adjustment of the daytime directional array has not adversely affected the operation of the present nighttime directional antenna system.

FEDERAL COMMUNICATIONS COMMISSION,
ERNEST NASH,
Hearing Examiner.

F.C.C. 73R-45

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WIOO, INC., CARLISLE, PA.	Docket No. 19468 File No. BPH-6572
HOWARD J. HILTON, JOHN E. McGOWAN, AND JOHN E. HILTON, DOING BUSINESS AS HILTON, McGOWAN & HILTON, CARLISLE, PA.	Docket No. 19469 File No. BPH-6631
ALEXANDER CONTRACT AND SYLVIA CONTRACT, DOING BUSINESS AS CUMBERLAND BROADCASTING CO., CARLISLE, PA.	Docket No. 19471 File No. BPH-7404
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted January 24, 1973; Released January 31, 1973)

BY THE REVIEW BOARD:

1. Before the Review Board is a petition to enlarge issues, filed September 28, 1972, by WIOO, Inc. (WIOO), which seeks the addition of an issue to determine whether Cumberland Broadcasting Company (Cumberland) knowingly solicited a false and misleading statement to be filed with the Commission in support of its application, and, if so, the resulting effect on Cumberland's basic or comparative qualifications.[1]

2. WIOO's petition is directed toward a portion of Cumberland's amended financial showing[2] wherein Cumberland relies upon the sale, if necessary, of certain property known as 117-119 West High Street in Carlisle, Pennsylvania, which, Cumberland asserts, has a ready market value of $86,000.[3] WIOO's petition alleges that in order to substantiate their claim of marketability, Cumberland attempted to obtain from James R. Scott, a Carlisle real estate agent, an "agreement of sale" to be filed with the Commission. In his affidavit attached to the petition, Scott relates that Alexander Contract (a Cumberland principal) asked Scott to draft and sign the agreement to purchase the property for $80,000. When Scott said he was not interested in the purchase, especially because the consideration was nearly double Scott's estimate of its value, Contract assured him that the agreement would be destroyed after receiving a license for a new FM station.

[1] Also before the Board are the following related pleadings: (a) Broadcast Bureau's comments, filed October 12, 1972; (b) Cumberland's opposition, filed October 19, 1972; and (c) WIOO's reply, filed October 30, 1972.

[2] The amendment was accepted by Order of the Presiding Judge, FCC 72M-832, released June 27, 1972.

[3] The disparity between Cumberland's assertions of fair market value, and WIOO's valuation (approximately $50,000) was the subject of an earlier petition to enlarge, and by Memorandum Opinion and Order, 37 FCC 2d 342, 25 RR 2d 312, released September 20, 1972, the Review Board added a limited financial issue against Cumberland to determine both the "current marketability" and the "reasonable fair market value of the property proposed for sale" by Cumberland's principals.

Scott swears that Contract then told him (Scott) that the purpose of the document was "to substantiate a ready purchaser for the property in order to establish liquidity and assetts [sic] in cash to the F.C.C. in order to qualify financially for an FM license." The Broadcast Bureau, while questioning the timeliness of the petition,[4] supports the addition of "an appropriate issue".

3. Cumberland opposes the petition on both procedural and substantive grounds. Cumberland argues first that the petition is nothing more than a "poorly disguised" petition for reconsideration of the Review Board's Memorandum Opinion and Order, *supra* note 3, which, having considered the "entire James Scott matter,"[5] added only a limited financial issue. Cumberland also opposes the petition on the merits, on the grounds that the allegations fail to establish improper conduct, and that Scott's affidavit relates only a portion of the events which actually occurred. The sequence of events is then augmented by Cumberland's assertions that Scott was initially interested in purchasing the property; that he knew the agreement was to be non-binding; and that Scott subsequently indicated his reluctance to sign what his attorney purportedly advised him was a binding agreement.

4. In support of its claims, Cumberland submits an affidavit of Alexander Contract,[6] who claims that when Scott asked him what would happen should the FCC's ruling be delayed for a year, Contract assured him that he (Scott) would not be sued on the agreement, Contract maintains that Scott agreed to the proposal and made some notes about Contract's request. It was Scott's responsibility to draft the agreement, and Contract insists that Scott was "free to include any conditions or terms he desired." Upon learning of Scott's change of mind, Contract undertook to draft the proposed agreement with the aid of his attorney, characterizing this effort as "affirmative action to insure that the document that was expected to be filed with the Commission said exactly what was to be the understanding between Mr. Scott and me." The draft agreement[7] states that Scott is "interested in purchasing [the] property for $86,400",[8] but that he "cannot make a binding offer". The draft was never seen by, nor read to, Scott, who was thus, Cumberland asserts, not in a position to know of Contract's efforts to secure an agreement embodying the "complete" understanding. The document does not contain language to the effect that Contract would not institute legal proceedings against Scott, nor does it contain Contract's purported intention to destroy the agreement upon receiving an FCC license.

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[4] Scott's affidavit is dated August 25, 1972, and was previously submitted to the Board by WIOO on September 8, 1972, in connection with an earlier petition to enlarge issues. See note 5, *infra*.

[5] WIOO made reference to the "James Scott matter" in its reply to Cumberland's opposition to WIOO's third supplement to its petition to enlarge, filed September 8, 1972, and attached thereto as Exhibit C, the same affidavit of Scott now under consideration.

[6] Also submitted is an affidavit of Cumberland's attorney who was a witness to a phone call Contract made to Scott, aided in the preparation of a draft "agreement," and participated in an abortive attempt to secure Scott's attorney's approval of the agreement. Scott's attorney informed Contract and his counsel that he had not been consulted in the matter by Scott.

[7] A copy of the draft is attached to Cumberland's opposition.

[8] The difference between consideration of $80,000 in Scott's affidavit of August 25, 1972, and that of $86,400 in Contract's affidavit is unexplained, but immaterial to our consideration.

5. In reply, WIOO submits a further affidavit of Scott, dated October 27, 1972, in which Scott denounces Contract's affidavit as "misleading and deviat[ing] from the truth in several respects." Scott reaffirms his complete lack of interest at any time in purchasing Contract's property, and then states (apparently in spite of his lack of interest) that he consulted his attorney, who recommended that Scott refrain from entering an agreement he had no intention of fulfilling. Scott stresses that:

> . . . I was approached by Mr. Contract to enter into this agreement for the purchase of his property in order for him to establish his financial liquidity and that I made it clearly apparent to him that I was totally disinterested in securing his real estate. It was then that he suggested an executed and notorized [sic] sales agreement indicating my intent to purchase the property for a rediculously [sic] high price with his assurance as a "gentleman" that I would never be called upon to complete the transaction.

6. Initially, the Board notes that the instant petition is untimely and that no good cause has been shown for the tardiness; however, the Board agrees with the Broadcast Bureau that the *Edgefield-Saluda* test [9] has been met and that the serious public interest questions raised by the allegations merit our consideration. *Chapman Radio and Television Company*, FCC 73R–8, released January 10, 1973; and *Medford Broadcasters, Inc. (KDOV)*, 18 FCC 2d 699, 16 RR 2d 900 (1969). The Board disagrees with Cumberland's contention that the matter before us is a "petition for reconsideration". The Commission's Rules explicitly state that petitions for reconsideration of interlocutory actions of the Review Board will not be entertained. See Sections 1.102 (b) (2), 1.106(a) and 1.291(c) (3) of the Rules. However, the Board must reject Cumberland's argument that WIOO's petition has been the subject of our previous determination. Our prior consideration does not preclude the Board from acting on the instant request because they are premised on distinctly different issues. *Cf. WTAR Radio-TV Corporation (WTAR-TV)*, 37 FCC 2d 480, 483–84, 25 RR 2d 463, 468 (1972). The matter previously raised by WIOO was with regard to Cumberland's financial qualifications, specifically, the determination of the value of the property which Cumberland proposed to sell to meet its cash requirements.[10] The allegations now before the Board raise questions concerning the character and conduct of one of Cumberland's two principals. This issue, therefore, is for the first time raised by the instant petition. Having determined that there are no procedural infirmities, we will now proceed to the merits.

7. The petitioner has raised certain questions, which, if true, seriously reflect upon Cumberland's character and its qualifications to be a Commission licensee. Cumberland's assertions to the contrary, the conflicts in the affidavits before the Board must be resolved at an evidentiary hearing. See *Christian Voice of Central Ohio*, 26 FCC 2d 76, 81–82, 20 RR 2d 389, 395 (1970); *Sumiton Broadcasting Co.*,

[9] *The Edgefield-Saluda Radio Co. (WJES)*, 5 FCC 2d 148, 8 RR 2d 611 (1966).

[10] Furthermore, Scott's affidavit was appended to a reply pleading (note 5, *supra*), and therefore the Board expressly limited its consideration to the financial issue raised in WIOO's petition, as thrice supplemented. No new issue may be raised nor considered in a reply pleading; rather, the material contained therein must be confined in scope to a surrebuttal of an opposition. Sect. 1.294(c) of the Rules.

Inc., 15 FCC 2d 400, 404, 14 RR 2d 1000, 1005 (1968), and cases cited therein. In addition to the conflicting affidavits, however, there are a number of undisputed facts, which, taken together, also indicate the necessity of an evidentiary inquiry to determine whether Alexander Contract's conduct reflects adversely on his character qualifications. Contract's attempts to secure a document which was to have been used to substantiate his financial representations to the Commission remain uncontradicted and, indeed, acknowledged. His motivation and the efficacy of the document clearly warrant the addition of an issue. A similar situation arose in *Orange County Broadcasting Co.*, 37 FCC 2d 794, 25 RR 2d 619 (1972), which involved the apparent solicitation of a letter of credit from a bank with assurances from an applicant that the bank would not be legally bound.[11] In adding an issue to determine the circumstances surrounding the issuance of the bank letter, the Board stated:

> While a legally binding commitment is, o[f] course unnecessary to establish the availability of a proposed loan, the wording of [the] letter reflects that the applicant may have been attempting to merely obtain evidence of a commitment to satisfy the Commission without any regard to the efficacy of that commitment. To obtain and rely on such a commitment letter would clearly reflect on an applicant's candor and integrity. [37 FCC 2d at 798, 25 RR 2d at 624.]

The fact that Contract never obtained the signed "agreement" and therefore never filed it with the Commission, while material in the context of a misrepresentation issue, is immaterial to the question of his conduct. Because Contract's conduct is questionable, the Review Board is of the opinion, for the reasons advanced above, that the addition of an issue is warranted.

8. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed September 28, 1972, by WIOO, Inc., IS GRANTED, and that the issues in this proceeding ARE ENLARGED to include the following issue:

> To determine whether Alexander Contract knowingly solicited a false and misleading offer of purchase from James R. Scott, to be filed with the Commission in support of the application of Cumberland Broadcasting Company, and, in light of the evidence adduced, the effect thereof on the basic and/or comparative qualifications of Cumberland Broadcasting Company.

9. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the issue added herein SHALL BE on WIOO, Inc. and the burden of proof SHALL BE on Cumberland Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[11] See 37 FCC 2d at 797, 25 RR 2d at 623.

F.C.C. 73–106

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WOIC, INC. For Renewal of License of Station WOIC, Columbia, S.C.	Docket No. 19674 File No. BR–1220

MEMORANDUM OPINION AND ORDER

(Adopted January 23, 1973; Released February 1, 1973)

BY THE COMMISSION: COMMISSIONER HOOKS CONCURRING AND ISSUING A STATEMENT IN WHICH COMMISSIONER JOHNSON JOINS.

1. The Commission has before it for consideration: (i) the above-captioned license renewal application for Station WOIC, Columbia, South Carolina; (ii) an untimely petition to deny the aforenoted application;[1] and (iii) various responsive and related pleadings.

THE PARTIES

2. The instant renewal application reflects that WOIC, Inc., the licensee of standard broadcast Station WOIC, is wholly owned by Speidel Broadcasters, Inc., which also controls the corporate licensees of the following standard broadcast stations: WTMP, Tampa, Florida; WPAL, Charleston, South Carolina; WYNN, Florence, South Carolina; WSOK, Savannah, Georgia; and WHIH, Portsmouth, Virginia. Policy control over all of the above stations, including WOIC, is formulated and exercised by the Speidel corporation's president and majority stockholder, Joe Speidel, III. The operational, day-to-day direction of the stations, which are principally programmed and oriented to the licensee's concept of black audience needs, is exercised by local station personnel under the general supervision of Mr. Speidel and other Speidel corporate officials. In December 1970, Mr. Speidel became the sole stockholder of Speidel Broadcasters, Inc.; thereafter, control of these stations' licensee corporations was transferred, with Commission approval, to Mr. Speidel as an individual. Beginning in May of 1971, Speidel assigned, with Commission approval, the licenses

[1] As required, the WOIC renewal application was filed ninety days prior to the expiration of the preceding license term. See Rule 1.539(a). Pursuant to Rule 1.580(i), a petition to deny WOIC's application should have been filed on or before November 1, 1969; however, the instant petition to deny was not submitted until December 1, 1969. No adequate explanation for the delay is proffered by petitioner, nor is a waiver of Rule 1.580(i) requested. See *Report and Order* (Docket No. 18495), concerning broadcast license renewal applications, 20 FCC 2d 191, 192–93, 16 RR 2d 1512, 1514 (1969). Accordingly, the instant petition to deny will be dismissed. Due to the nature of the matters raised, however, we have elected to consider the petition on its merits as an informal objection filed pursuant to Rule 1.587. See *Universal Communications Corp.*, 27 FCC 2d 1022, 21 RR 2d 359 (1971).

for Stations WTMP, WPAL, WYNN, WSOK and WHIH to new corporate owners.[2]

3. Petitioner, the Columbia Citizens Concerned with Improved Broadcasting (Columbia Citizens), is an association comprised of several local citizens who have joined together for the purpose of examining and improving the broadcast service to the black community of Columbia, South Carolina. Many of the twelve identified members of Columbia Citizens are also officers or directors of a number of national and state-wide organizations, such as the American Civil Liberties Union of South Carolina, the South Carolina Council on Human Relations, Inc., and the American Friends Service Committee, which allegedly join petitioner in its request to deny the WOIC renewal application. In the same vein, affidavits, expressing general support of petitioner's allegations, have been submitted from nineteen leaders of Columbia's black community, who "join themselves as parties to the Petition to Deny".

THE PETITION TO DENY

4. Columbia Citizens predicates its request to deny the WOIC renewal application upon the station's alleged insensitivity to the needs and aspirations of blacks, its failure to inform, educate or serve as a means of self-expression for Columbia's black community, and its economic exploitation of that community. Specifically, petitioner contends that the licensee discriminates against blacks in its employment practices; that Station WOIC has made no serious effort to ascertain the needs of the community's black residents; and that the station's program service, which is highly commercialized, is unresponsive to the needs of blacks and other groups in the WOIC service area and varies in significant respects from the programming proposal set forth by the licensee in its 1966 renewal application. The petitioner further submits that the licensee has attempted to conceal its discriminatory practices and its deficient program service through the use of misleading and inaccurate job descriptions and program classifications. In the same vein. Columbia Citizens challenges Speidel's character qualifications, alleging improper conduct in the operation of his Tampa, Forida station, WTMP.[3]

DISCRIMINATION

5. According to Columbia Citizens, all of the employees of Station WOIC who exercise actual control of station policy and operation are

[2] On September 5, 1972, the licensee, as required, submitted a renewal application covering the forthcoming triennial license period (December 1, 1972, through December 1, 1975) and published and broadcast the prescribed local notice of this filing. While we could delay consideration of the 1972 renewal application until petitioner has had an opportunity to examine and comment thereon, the Commission believes that since a hearing is required in any event (see paragraphs 12 and 22, *infra*), the more appropriate procedure is to designate for hearing both renewal applications and require petitioner to raise any additional matters with respect to the 1972 application at the hearing. See Rule 1.229.

[3] The Station WTMP matter was set forth by petitioner in a February, 1971 supplement to its petition to deny. The licensee urges the rejection of the motion for leave to supplement and the tendered supplement, arguing that the allegations are both untimely raised and irrelevant to a resolution of the WOIC renewal application. Since the matter relates to the character qualifications of the licensee's majority stockholder (Speidel now holds an 83.3% stock interest), the Commission will grant the late-filed motion and consider the Columbia Citizens petition as supplemented. See *Western North Carolina Broadcasters, Inc.*, 8 FCC 2d 126, 10 RR 2d 78 (1967).

white, whereas blacks, who comprise a majority of the station's personnel, are neither permitted to participate in significant policy or programming decisions nor promoted to policy-making positions. Petitioner contends that the station's program director, Charles Derrick, a black, has no influence or control over programming policy; that another black employee, Paris Eley, who the licensee describes in its renewal application as a part-time news director and announcer, does not have the title of news director and has been refused permission to cover news events on behalf of the station; and that Reverend William Bowman, who reportedly also devotes time to the station's news operation, has, in fact, no news responsibilities.[4] Columbia Citizens also alleges that whenever policy-making positions become available, whites with inferior qualifications are hired to fill such vacancies. It is petitioner's contention that the foregoing discriminatory practices are not limited to the WOIC operation, but rather are common to all of the Speidel-owned stations.

6. In its opposition, the licensee denies any preferential promotion of whites at Station WOIC and maintains that Station WOIC, as well as the other Speidel stations, operates under a fair employment policy providing equal opportunities for blacks, both in initial employment and in advancement. In support thereof, the licensee points out that the personnel profile for the Speidel stations, including Station WOIC where black employees outnumber whites 10 to 8, reflects the employment of 53 blacks and only 36 whites.[5] As an example of the opportunities for blacks to achieve executive positions at the Speidel stations, the licensee notes that each of the program directors of these six stations is black and that blacks hold other responsible positions at Stations WHIH (general manager), WPAL (station manager), and WTMP (sales manager). With respect to WOIC's purported use of misleading and inaccurate job descriptions, Joe Speidel states in an affidavit that all personnel at his stations bear the responsibilities and duties commensurate with their particular positions. The WOIC general manager confirms Speidel's statement and specifically avers that Derrick's duties as the station's program director include: the responsibility for the quality, acceptability and presentation of commercial material; the assignment and maintenance of the announcers' work schedules; and the institution of all new programs, remote broadcasts and special sports programs. According to Brannon, the WOIC program director also consults with the station's general manager and public affairs director concerning program format changes and new program material. Derrick, by affidavit, attests to the foregoing description of his duties at Station WOIC. With respect to Eley's position at the station, Brannon submits that he personally assigned Eley the responsibilities of the station's news director on a part-time basis

[4] No affidavits in support of Columbia Citizens' allegations have been supplied from these WOIC personnel. Assertedly, the allegations are based upon statements made by Derrick and Eley in a discussion with petitioner concerning the operation, practices and policies of Station WOIC.

[5] In an affidavit tendered with the licensee's opposition pleading, Station WOIC's general manager, R. H. Brannon, avers that it is his practice to give first priority to black applicants whenever the hiring of a new employee is being considered. The affiant further states that all of the five employees, who have been added to the WOIC staff during the preceding three years, are black.

and requested him "to stay on top of local news events"; that Eley received a salary increase at that time; and that Eley's announcing duties prevented his full-time devotion to news gathering. According to Brannon, Eley is encouraged to cover news stories on his own initiative and, only on one occasion, was Eley requested by station management not to cover a particular news event.[6] Finally, Brannon describes Reverend Bowman's responsibilities to include the gathering of news pertaining to church activities and to items of a general religious nature for presentation by Station WOIC. Again, the WOIC employee, by affidavit, confirms the licensee's description of his station activities.

7. In reply, Columbia Citizens submits that its claim of discrimination against blacks is based upon a document which was sent to the Richland County Citizens Committee, Inc., by Derrick and Eley, who therein alleged the absence of blacks in policy-making positions at the Speidel stations and called for the establishment of a conscientious black news department and a separate black public relations department, headed by a black, to serve as liaison between Station WOIC and Columbia's black community. These employees also opined that several WOIC programs (*i.e.*, "Kaleidescope" and "Definition") were not relevant to the needs of the black community and that the station's criterion for hiring black salesmen (*i.e.*, a college degree with prior experience in the field) was unrealistic. Notwithstanding the licensee's description of its employees' responsibilities, petitioner posits that Derrick has little or no authority for planning or initiating programming; that consultation with Derrick concerning program matter is a mere formality before the station's general manager of public affairs acts in this regard; and that the public affairs director would be required to report to Derrick, rather than the reverse, if he was truly the station's program director. Citing Derrick's opinion of the Kaleidescope and Definition programs, Columbia Citizens asserts that Derrick's programming recommendations are ignored at Station WOIC. In petitioner's view, Brannon's unawareness of the fact that his instructions were misunderstood by Eley and "were not in fact being carried out", reflects a lack of intimacy between the parties and casts doubt upon Eley's real authority over news. According to Columbia Citizens, Reverend Bowman does not present news "in the sense of objective reporting of events".

8. The Commission does not believe that a substantial and material question of fact has been raised with respect to the licensee's employment practices. Petitioner's claim that whites with inferior qualifications are preferred over better qualified blacks is completely unsubstantiated. No facts or examples of any person allegedly discriminated against because of race is supplied by Columbia Citizens, and the Commission notes the significant absence of any complaints of discrim-

[6] That news event concerned a strike of hospital workers in Charleston, South Carolina, which is located approximately 120 miles from Columbia. Brannon informed Eley that the event could be more fully and economically covered by Station WPAL which would thereupon provide that coverage to Station WOIC. In his affidavit, Eley acknowledges his misunderstanding concerning his news title and confirms the accuracy of Brannon's description of his station responsibilities and the Charleston hospital strike incident. The affiant further avers that "I use my discretion as to what local news to cover and subject only to my other duties on the air and transportation, I do cover a lot of local material".

inatory conduct from station personnel, former employees, or job applicants. While some WOIC employees may disagree with the criterion used by the station to select its sales personnel, there is no indication that a different standard is employed with respect to prospective white salesmen or that the criterion used constitutes an artificial barrier to black employment. Moreover, the station's hiring pattern and employment profile belie a suggestion that blacks are confined to menial pursuits or are otherwise denied equal employment opportunities. The same is true with respect to the other Speidel stations. In short, petitioner's allegations lack the required specificity which would warrant exploration of the licensee's employment practices in an evidentiary hearing. See *Time-Life Broadcast, Inc.*, 33 FCC 2d 1050, 1059, 23 RR 2d 1165, 1176 (1972). In the same vein, petitioner's assertions that several WOIC employees do not exercise the responsibilities suggested by their job descriptions or titles are not only unsupported by factual evidence, but also refuted by the sworn statements of station officials which, in turn, are corroborated by the employees in question. In this regard, we note that the licensee is not required to bestow program autonomy upon its program director and that no curtailment of Eley's news-gathering activities on behalf of the station apparently resulted from the misunderstanding surrounding his job classification. See note 6, *supra*. In view of the foregoing, the Commission concludes that the licensee did not misrepresent the responsibilities and functions of its program director and its principal news-gathering personnel.

ASCERTAINMENT OF COMMUNITY NEEDS

9. In support of its contention that the licensee has inadequately surveyed the needs of Columbia's black community, Columbia Citizens principally argues that blacks comprise approximately 42% of the population served by Station WOIC; that of the 58 representatives of the area's business community who were consulted by means of a mailed questionnaire, only seven are blacks; that several of the 58 representatives are advertisers of Station WOIC; and that blacks comprise about one-half of the 13 area residents who were considered by virtue of their multiple affiliations to be especially qualified to speak on community needs and who were personally interviewed by the licensee. Columbia Citizens also submits that the narrative description of community needs set forth by the licensee in the subject renewal application appears to be based largely upon a report entitled "Opportunity and Growth in South Carolina 1968–1985," which allegedly gives little attention to the black community's particular needs, tastes, and desires as understood by black leaders. In the same vein, petitioner charges that neither the WOIC public affairs director, who it believes is in charge of ascertaining Columbia's needs and interests on behalf of the licensee, nor any other white policy-making personnel of the licensee has any substantial involvement with blacks or their activities. In petitioner's view, the licensee has not sampled an appropriately broad spectrum of community opinion for a municipality the size of Columbia.[7] Columbia Citizens further contends that two of

[7] Allegedly, the population of Columbia totaled 183,500 persons in 1969.

the 13 listed community spokesmen deny having been personally interviewed by any representative of Station WOIC.

10. With respect to the alleged inadequacy of its ascertainment of community needs, the licensee argues that Columbia Citizens has disregarded the continuing relationship, which the station's personnel maintains with the community and its organizations and which provides the licensee with much useful information concerning the community's needs and interests. As evidence of the civic involvement of station personnel, the licensee points to Exhibit 1A of the subject renewal application which sets forth approximately 28 area organizations, 14 of which are reported to be primarily concerned with needs and interests of Columbia's black community.[8] The licensee also maintains that its community ascertainment efforts were not limited to the 58 questionnaire responses and the 13 personal interviews challenged by petitioner. Rather, discussions were conducted with station personnel, a majority of whom are black, and additional questionnaires were distributed to WOIC personnel who were to use them in interviewing as many Columbia citizens as possible during their daily station activities. According to the licensee, the community needs and interests delineated in its Exhibit 1B were elicited from the foregoing ascertainment efforts and the personal and telephone interviews which were also conducted by the station's general manager and public affairs director. With respect to the two community leaders who allegedly were not personally interviewed, the WOIC public affairs director explains that the questionnaire was used as a guide for the personal consultations; that the individuals, both of whom are members of the Columbia Citizens association, visited the station and were queried by her with respect to the survey; and that these leaders, instead of responding to the questionnaire at that time, left with copies of the questionnaire which they subsequently completed and returned to the station. Since station personnel had spoken directly with these leaders, they were included in the listing of personal interviews.[9]

11. The licensee's ascertainment surveys were conducted and the subject renewal application was filed with the Commission prior to the promulgation of the proposed *Primer*, which was intended to clarify and provide guidelines for the ascertainment of community problems. On February 23, 1971, the Commission released its *Report and Order* adopting the *Primer*. See 27 FCC 2d 650, 21 RR 2d 1507. Among other things, the *Primer* requires that broadcast applicants, including licensees seeking renewal of their authorizations, consult with a representative cross-section of community leaders and members of the general public in the area to be served and design programming re-

[8] The licensee notes that Miss Cynthia Gilliam, its public affairs director, is and has long been substantially involved in public service activities of deep concern to Columbia's black residents and that the submitted portfolio of her associations and accomplishments covers many areas. In addition, Miss Gilliam, by affidavit, denies that she is in charge of the licensee's community ascertainment efforts. The affiant further states that she does not have the authority to make the actual determinations regarding programming and program policy at Station WOIC—that authority is the province of the station's general manager under the policy direction of the licensee's owners.

[9] In its reply, Columbia Citizens renews its argument that the licensee has contacted only a handful of blacks, despite the substantial number of blacks residing in its service area, and that WOIC's survey efforts, individual or collectively, do not comport with the requirements either set forth by the Commission in its proposed *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 20 FCC 2d 880 (1969), or established in the Commission's pronouncements and caselaw since *Minshall Broadcasting Company, Inc.*, 11 FCC 2d 796, 12 RR 2d 502 (1968).

sponsive to those ascertained community problems as evaluated. Since the *Primer* contemplates a person-to-person dialogue between the applicant and the persons representing the significant groups that comprise the community, only principals or management-level employees of the applicant can conduct the required personal interviews, whereas greater latitude is afforded an applicant in its consultations with members of the general public, provided that these interviews are generally distributed throughout the station's service area. Measured against these standards the licensee's ascertainment surveys are clearly inadequate. Nor do they fare better when tested by the standards in effect at the time the WOIC renewal application was filed.

12. In our August 22, 1968 Public Notice entitled "Ascertainment of Community Needs by Broadcast Applicants," FCC 68–847, 33 Fed. Reg. 12113, 13 RR 2d 1903, we stated that applicants should supply "full information" on the steps taken to become informed of the real community needs and interests of the area to be served and that the range of group leaders consulted should be representative of the various community elements—"public officials, educators, religious, the entertainment media, agriculture, business, labor, professional and eleemosynary organizations and others who bespeak the interests which make up the community." A necessary part of the ascertainment process is also the surveying of the general listening public who will receive the station's signals. See *Report and Statement of Policy Re: Commission En Banc Programming Inquiry*, FCC 60–970, 25 Fed. Reg. 7291, 20 RR 2d 1901, 1915. The licensee identified contacts with representatives of Columbia's business community and with 13 area leaders; however, the Commission is not persuaded that these contacts, standing alone, represent a fair, cross-sectional sampling of the groups, leaders and citizens that comprise the community of Columbia. See *Santa Fe Television, Inc.*, 18 FCC 2d 741, 16 RR 2d 934 (1969). While the licensee argues that these formal survey consultations should be viewed in conjunction with the continuing participation of Station WOIC and its personnel in the affairs and activities of the Columbia community, the latter efforts are not sufficiently detailed to show a meaningful investigation of the community's needs by this method [10] and to support the required conclusion that the licensee, through its various ascertainment efforts, has acquired a reasonable knowledge of its community's needs and has designed its program proposal in response thereto. See *United Television Company, Inc. (WFAN–TV)*, 18 FCC 2d 363, 16 RR 2d 621 (1969); *Vernon Broadcasting Company*, 12 FCC 2d 946, 13 RR 2d 245 (1968). Therefore, the Commission concludes that an evidentiary inquiry is warranted so that the licensee can fully demonstrate its efforts to ascertain the community needs and interests of the areas served by Station WOIC and the means by which it proposed to meet those needs and interests.[11] See *WPIX, Inc.*

[10] Similarly, the survey efforts of these employees, as well as the personal interviews conducted by the station's management-level personnel, suffer from a lack of specificity. See *Southern Minnesota Supply Co. (KYSM)*, 12 FCC 2d 66 (1968).

[11] In this regard, the licensee will be permitted to demonstrate its ongoing efforts to remain conversant with and attentive to the community's problems throughout the period when the original renewal application was in deferred status. *Cf. Chuck Stone v. FCC*, D.C. Cir. Case No. 71–1166, decided June 30, 1972, 24 RR 2d 2105, rehearing denied September 1, 1972, 25 RR 2d 2001; *WKBN Broadcasting Corp.*, 30 FCC 2d 958, 974, 22 RR 2d 609, 625–26 (1971), reconsideration denied FCC 72–1002, released November 15, 1972.

(*WPIX*), 20 FCC 2d 298, 17 RR 2d 782 (1969); *United Television Company, Inc.* (*WFAN-TV*), *supra*. We do not believe, however, that a misrepresentation issue concerning the licensee's survey contacts is warranted. The WOIC public affairs director's explanation concerning the listing of the two Columbia Citizens members with the other community leaders with whom the licensee had directly spoken, is not contradicted and demonstrates a reasonable predicate for the licensee's action. Contrary to petitioner's opinion, this matter does not adversely reflect upon the licensee's requisite qualifications. See *RKO-General, Inc.*, 33 FCC 2d 664, 23 RR 2d 930 (1972).

PROGRAM SERVICE

13. Generally, Columbia Citizens submits that Station WOIC primarily caters to the culture, the habits and the stereotypes of the segregated past by presenting a steady diet of soul and gospel music and makes no countervailing effort to contribute to the communication of liberating information, education and ideals.[12] Columbia Citizens acknowledges that, upon request, station time is made available to organizations such as the Urban League and NAACP; however, the petitioner charges that the licensee neither participates in any significant manner in the planning and preparation of these presentations nor develops programming addressed to community needs with its station personnel. It is the station's policy, opines petitioner, to run a low-cost operation by presenting a few discussion programs produced by others without cost to it and a "rip-and-read" news operation that provides very little local news and almost no local news of particular concern to Columbia's black population.[13] The petitioner further contends that the station does not, as claimed, devote 65% to 70% of its newscasts to local and regional events; that the description of a number of the programs set forth in the station's program schedules are misleading; and that only three of the fourteen public service type programs promised in Station WOIC's 1966 renewal application were presented during the composite week.

14. The licensee denies that its programming is unresponsive to the needs of its community as a whole or to Columbia's sizable black citizenry and, in support thereof, the licensee points to a number of typical programs broadcast during the last year of its past license term, such as:

[12] In Exhibit 1C of the 1969 renewal application, the licensee detailed several of the ascertained community problems and the public affairs programs it proposes to broadcast during its next license term to meet those problems. No specific allegations are directed by petitioner to the community responsiveness of the programming material set forth in this exhibit which, in any event, will be explored under the specified *Suburban* issue. Accordingly, we will herein consider petitioner's allegations in the context of the programming which Station WOIC presented from 1966 to 1969.

[13] In support of the latter allegation, petitioner submits an affidavit from several of its members who, as leaders of black community organizations, have regular occasion to request station coverage of events and issues of alleged importance and concern to Columbia's black community. The affiants state that they have repeatedly been informed by station personnel that no news reporters are available and that the news items should be given to the announcer on duty at the studio. It is the affiants' belief that Station WOIC does not maintain a news department and has no news reporters.

"Memorandum".....	The official 15-minute, weekly program of the Columbia Urban League. Approximately 85% of the programs utilize a discussion format hosted by the League's executive director and, aside from programs and projects of the organization, are devoted to disseminating information regarding housing, employment opportunities, voter registration and educational projects.[14]
"Definition".....	This is a discussion program composed of a panel of area high school youth and a professional moderator. The program is presented on a weekly basis during a 15-minute time segment and presents comments from students of different sex, race, religion and economic background.[15]
"Employment Guidance Center Program" (formerly, "Good Advice").	This program has been presented for three years and is now broadcast for a 30-minute period on Saturday mornings. The program, moderated by an employment counselor from the organization, consists of interviews and discussions with prominent area businessmen, industrialists and professionals regarding their firms' educational requirements for employment. Information concerning the different types of employment available in the area and the salary range, fringe benefits and similar areas of interest to a prospective employee is also aired during this program.
"Palmetto Profiles" (formerly "Columbia Close-Up").	A 15-minute, weekly interview-discussion program featuring the executive director of a Planned Parenthood organization for Richland and Lexington Counties. Participants on this program include doctors, lawyers, judges, OEO officials and other community leaders concerned with improving the health and welfare of the area's residents.
"Homemaker Program."	This is a series of five, 5-minute programs presented weekly in cooperation with the Home Economics Division of the South Carolina Department of Education. Programs in this series provide basic information on such topics as pre-natal care, obtaining the most dollar and food value from food stamps and insurance values.
"Senior Citizens Program."	A 15-minute, weekly program featuring the coordinator of the Foster Grandparent's Project located at Pineland, a state training school and hospital. The program is designed to disseminate information of value to the area's senior citizens and guests have included physicians specializing in geriatrics and representatives of the local Social Security Office and the state employment service.

[14] A similar program, "Swing into Action," which is also presented under the aegis of the Urban League, dealt with black economic development. Other weekly programs devoted to apprising blacks of the services rendered by Columbia's legal aid agency ("Your Neighborhood Lawyer") and to explaining the municipal, county, state and national governmental structure, the electoral college and the proper use of voting machines (Voter Education Project—"V.E.P. Report") have also been aired by Station WOIC.

[15] According to the WOIC general manager, the format of this program is subject to modification. Due to difficulties encountered in arranging an appropriate student panel on a regular basis during the school year, it is sometimes necessary for the program moderator to present music accompanied by a narrative description.

The licensee's past programming has also included a special 30-minute, panel discussion program on juvenile crime with a judge and the chief correctional officer for the Richland County Family Court, a police captain, and the public relations director for the Richland County Citizens Committee; and a weekly, 30-minute program that was aired for a three-month period in 1969 and that dealt with equal

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job opportunities. On a seasonal basis, Station WOIC has also presented a program, consisting of news, discussions and interviews by students and faculty members of South Carolina State College, and a program containing advice on filling out federal tax forms and other pertinent information relating to the requirements and services of the Internal Revenue Service.[16]

15. Turning to petitioner's more specific allegations, the licensee contends that only two of the fourteen specifically mentioned programs which it planned to present during its 1966–1969 license term were not undertaken during that period, namely, a series on good citizenship and a series dealing with releases from various governmental agencies and public service institutions.[17] The licensee further maintains that six of the promised programs were presented under the same or different titles during the composite week and that another program was pre-empted by a special local program on the date selected by the Commission. According to the licensee, the remaining programs or substitutes of similar service characteristics were aired during the license term. With respect to the allegations addressed to its news operation, the licensee states that, as in the case of many stations of its size, it does not maintain a full-time news department. Rather, it principally relies upon the news-gathering activities of Eley and Reverend Bowman (see para. 6, *supra*), whose efforts are complemented by the remaining station members and announcers who, as part of their regular duties, are also alert to newsworthy happenings in the community and are available to cover local news events, if necessary. In this manner, station personnel covered a school problem in Lexington, South Carolina, a disturbance on the campus of South Carolina State College, and a highway controversy in Columbia. The station also receives many requests from various community groups for coverage of future events and activities and, in its general manager's opinion, the station does its best to provide the requested news coverage and at the same time, afford airtime to all of Columbia's community groups with particular emphasis to those dealing with the community's black citizens. Regarding its estimate of the amount of airtime to be devoted to local and regional news events, the licensee submits that 42% of the news broadcast during the composite week was clearly related to local events[18] and that the inclusion of the local news, which was incorporated within the station's other newscasts, would bring Station WOIC's local news coverage up to at least 65% during that selected period.

16. In its reply pleading, Columbia Citizens reiterates its objections to Station WOIC's program service and submits, for the first time, that repeated logging irregularities have made it impossible to determine

[16] In addition, the station's public affairs director identifies those members of the Columbia Citizens Association, who have utilized the broadcast facilities of Station WOIC on behalf of their other organizations and who have been guest participants on such public affairs programs as "Palmetto Profiles" and "Employment Guidance Center".

[17] Reportedly, the subject matter of these projected series was elsewhere treated in the station's program service.

[18] This figure was calculated by adding the broadcast time of the programs that dealt with news of a predominately local nature, such as, church and civic news, funeral announcements, and meetings, to the aggregate broadcast time of the newscasts entitled "South Carolina News Roundup."

the public affairs programs the licensee actually presented during the composite week. Columbia Citizens points out that on four of the five weekdays during the 8:00 to 8:30 p.m. time period, the licensee scheduled multiple public affairs programs at the same time without indicating which, if either program, was presented. Columbia Citizens further submits that several programs, not presented in cooperation with a *bona fide* educational institution, are inaccurately listed on the logs as educational programs, and that a U.S. Army recruiting program and a National Guard program are wrongfully classified as public affairs programs.[19] It is also revealed for the first time in this pleading, that petitioner monitored Station WOIC's programming for a full week in November of 1969. For a variety of reasons, however, only one day's monitoring, that of November 21, 1969, provides the basis for petitioner's allegations that the news broadcast by Station WOIC amounted to 4.2% of its total airtime, rather than 8.7% as claimed in the licensee's composite week analysis and that local and regional news only amounted to 45.3% of the news broadcast by Station WOIC, exclusive of weather forecasts and temperature checks.[20] Finally, Columbia Citizens argues that Station WOIC neither broadcasts nor has the capacity to present any local news of a type which would require an affirmative effort on the part of the station's staff. In support thereof, petitioner submits the affidavits of two of its members, Dewey Duckett, Jr., and Isaac W. Williams, who stated therein that Station WOIC does not cover or report upon events of interest to the black community, such as the regular public meetings of the governing board of directors of the Lexington-Richland Economic Opportunity Agency, the Columbia City Council, and the Richland County school board; that Mr. Williams, as field director for the South Carolina NAACP, was not interviewed by the station concerning his organization's opposition to the Judge Haynesworth nomination to the U.S. Supreme Court and its reaction to the Senate's disapproval of the appointment; and that news affecting Columbia's black residents is often not covered by Station WOIC because of its lack of news staff.[21] On the basis of its monitoring, Columbia Citizens also faults Station WOIC for not reporting the visit of Brig. Gen. F. Davison, one of the Army's highest ranking black officers, to nearby Fort Jackson and for not promptly reporting the Senate's rejection of the Judge Haynesworth appointment.

[19] It is also suggested by virtue of the station's request for a listing of the participants on the Employment Guidance Center's program (see para. 14, *supra*) that the licensee has little or no control over the content of Station WOIC's public affairs programs. Such inference is not warranted, and since petitioner cites no specific instance where the licensee has been remiss in this regard, this unsupported accusation will not be considered further.

[20] In petitioner's opinion, reliance cannot be placed upon the sample program logs in analyzing the station's newscasts since the monitoring disclosed that the hourly and half hourly news headline programs are not always one minute in duration as scheduled and since the content of the station's news programs (i.e., local, regional, and national) is not depicted on the logs. Based upon its analysis of the sample logs, Columbia Citizens further submits that the amount of broadcast time devoted to news fell short of the 10 hours and 15 minutes proposed in the station's 1966 renewal application.

[21] Also tendered with petitioner's reply pleading is an affidavit from "a regular listener of WOIC" who cites the station for its failure to inform listeners of programs of vital concern to the poor, such as social security, welfare benefits and rights, and housing.

17. As the Commission has pointed out on numerous occasions, the decision as to the choice of a station's entertainment format is in the sound discretion of the licensee. *E.g., KNOK Broadcasting, Inc.*, 29 FCC 2d 47, 21 RR 2d 960 (1971). Here, as admitted by Columbia Citizens, the entertainment format selected by Station WOIC does have wide support among Columbia's black residents, and we are not convinced that the Commission should interfere and require the licensee to replace its present entertainment format. See *Interstate Broadcasting Company, Inc.*, 35 FCC 2d 737, 24 RR 2d 874 (1972). Nor are we persuaded by petitioner's general allegations that the station's informational programming is insensitive to the community's needs. See *Black Identity Education Association*, FCC 72–378, 21 RR 2d 746. On the contrary, an examination of the illustrative public affairs programs listed in the WOIC renewal application discloses programs clearly addressed to community problems, including several programs specifically attentive to the needs and interests of Columbia's black citizenry. See paragraph 14, *supra*. Programs dealing with black problems in the areas of civil rights, housing, employment opportunities, social welfare, civics and economic development have apparently been broadcast by Station WOIC.[22] That petitioner, and even some station employees, might regard certain individual programs as irrelevant to the interests of the black community does not raise an issue justifying our intrusion in this area. See *WKBN Broadcasting Corp.*, *supra*, 30 FCC 2d at 969–71, 22 RR 2d at 621–22. To belittle the station's public affairs programming on the basis of the licensee's expenditures for these programs is not warranted, especially where, as here, that programming as a whole appears responsive to the community's needs and interests. Moreover, the Commission does not consider the relationship between revenues and program expeditures as a factor in evaluating the adequacy of a licensee's public affairs programming, albeit a request to that effect is contained in a current rule making petition (RM–1837). To apply any new standards in this regard on a case-by-case basis, without first subjecting them to the comprehensive consideration inherent in the rule making process,

[22] Two 14-minute programs listed on the program logs for the composite week were misclassified by the licensee. The obviousness of the error and the fact that the misclassifications did not appreciably enhance the amount of broadcast time devoted to public affairs programming negate an inference that these errors were designed to deceive the Commission. See *Scripps-Howard Broadcasting Co.*, 31 FCC 2d 1090, 1104–06, 22 RR 2d 1069, 1086 (1971). As noted by Columbia Citizens, the licensee was remiss in listing the actual starting time of the programs on its pre-typed logs and in making appropriate corrections and notations as required by Rule 73.112. These shortcomings, however, do not raise a substantial question requiring exploration in a hearing. For the most part, the public affairs programs set forth in the 1966 renewal application were undertaken by the licensee and, according to the sworn statement of the station's public affairs director "WOIC showed [six] of them in its composite week for the 1969 application." This representation is not undermined by the licensee's failure to note the programs' actual starting times, which Columbia Citizens initially raised *in its reply pleading*. Similarly, petitioner's claimed confusion concerning what programs were aired during the weekday 8:00–8:30 p.m. time segment can easily be dispelled by reference to Rule 73.112(a)(1)(ii), which states in pertinent part that: "[I]f programs are broadcast during which separately identifiable program units of a different type or source are presented, and if the licensee wishes to count such units separately, the beginning and ending time for the longer program need be entered only once for the entire program. The program units which the licensee wishes to count separately shall then be entered underneath the entry for a longer program, with the beginning and ending of each such unit, and with the entry indented or otherwise distinguished so as to make it clear that the program unit referred to was broadcast within the longer program."

is not appropriate. See *Aliaza Federal de Pueblos Libres*, 31 FCC 2d 557, 22 RR 2d 860 (1971).

18. Petitioner's principal objection to the news service of Station WOIC appears to be that the station has no full-time news department or reporters. Initially, we must note that our concern in this regard "is only that the station show that it has employed sufficient personnel to assure the presentation of an amount of local, national and international news which is commensurate with the needs of the community." See *Letter to Mr. Richard A. Beserra*, FCC 72-965, 25 RR 2d 777, 780. Here, the licensee has indicated the general manner by which it becomes acquainted with news happenings of concern to its community and has cited several instances where its personnel, despite their other station duties, have been utilized to cover and report on events which the licensee deemed newsworthy. Petitioner views such coverage as sporadic and without continuity; however, these objections do not raise a material question regarding the station's ability to inform its listeners. Columbia Citizens also urges the Commission to fault the licensee for not immediately interrupting its programming to report the rejection of Judge Haynesworth's appointment [23] and for not covering various other news events relevant to Columbia's black community. A licensee has wide discretion in the area of programming and, in the absence of extrinsic evidence that the licensee has falsified, distorted or suppressed news, the Commission will not substitute its judgment for that of the licensee in determining what news is of prime interest to its listening audience and the manner in which is should be presented. See *Universal Communications Corp., supra*, 27 FCC 2d at 1025-26, 21 RR 2d at 364-65. Again, we will not interfere with the exercise of the licensee's news judgment where, as here, there is no showing that the licensee consistently and unreasonably ignored important matters of public concern .Compare *Radio Station WSNT, Inc.*, 27 FCC 2d 993, 21 RR 2d 405 (1971). Based upon its analysis of Station WOIC's sample logs, petitioner questions whether the licensee has, in fact, fulfilled its earlier promises with respect to the amount of airtime allocated to news programs, particularly local and regional news. We have carefully examined the program logs covering the composite week and we find that both the petitioner and the licensee have apparently failed to include in their calculations the weather reports and temperature announcements which Station WOIC broadcast during the period in question. See notes 1 and 4 of rule 73.112. The consideration of this material resolves the claimed discrepancies relating to the licensee's news broadcasts.[24] In view of the foregoing, the Commission believes that no hearing issue is appropriate with respect to the program service presented by Station WOIC during its past license term.

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[23] According to petitioner, the result of the Senate's vote was first carried by the A.P. newswire at 1:08 p.m.; nearly one hour later, Station WOIC reported this event in its regularly scheduled 2:00 p.m. news program.

[24] By virtue of a single day's monitoring of Station WOIC, petitioner suggests that the sample logs inaccurately portray the station's program service and cannot be relied upon. We disagree. To measure or predict a station's performance on the basis of a single day of operation is not warranted. Moreover, licensees are not required to satisfy their projected programming percentages on a daily or weekly basis. See *Tri-Counties Communications, Inc.*, 31 FCC 2d 83, 22 RR 2d 678 (1971).

COMMERCIAL PRACTICES

19. Columbia Citizens accuses Station WOIC of devoting an excessive amount of time to commercial announcements and of exceeding its limitation of 25% commercial matter in any 60-minute segment on several occasions during the preceding license term. Petitioner further criticizes the licensee for increasing from 25% to 30% the maximum percentage of commercial matter in normal hours and for permitting up to 20 minutes (33⅓%) during two three-hour periods on Thursdays, Fridays, and Saturdays and at all times during election campaigns. The licensee opposes the specification of an issue in this regard, arguing that the preceding license renewal application, as amended on December 30, 1966, reflects that 18 minutes was the maximum amount of commercial matter which it proposed to normally allow each hour and that the only change in its commercial policy, the substitution of Wednesday for Saturday as a heavy traffic day, is responsive to present buying habits in its market and does not represent a substantial variance from Station WOIC's prior commercial practices.

20. Examination of the subject renewal application reflects that the licensee exceeded its 18-minute commercial ceiling in 8 of the 124 hourly segments of the composite week and that none of the overages exceeded 20 minutes. The licensee specifically stated that deviations from its normal commercial policy may occur under certain circumstances. It is not alleged that the eight overages did not fall within the specific circumstances provided for by the licensee. Nor has petitioner shown that Station WOIC's commercial policy contravenes our most recent pronouncements regarding commercial standards.[25] See *Chicago Federation of Labor and Industrial Union Council*, FCC 72–1079, released December 8, 1972. No substantial and material question has been raised concerning the station's commercial practices and no issue is, therefore, warranted. See *Mahony Valley Broadcasting Corporation*, FCC 72–1001, released November 15, 1972.

THE STATION WTMP MATTER

21. Columbia Citizens filed a supplement to its petition to deny on February 16, 1971. See note 3, *supra*. As part of that submission, the petitioner attached affidavits from two representatives of the University of South Florida student government charged with the responsibility of collecting contributions for the Disadvantaged Student Loan Fund. The affiants state that in May of 1970 they were personally informed by the Station WTMP general manager that the money originally collected from "Soul Night",[26] which had been spent, would

[25] While recognizing the right of a broadcaster to exercise his reasonable judgment in terms of his particular situation, the Commission expressed general approval of a commercial policy which specifies a normal commercial content of 18 minutes in each hour with stated exceptions permitting up to 20 minutes per hour during no more than 10% of the station's total weekly broadcast hours and with a further exception allowing up to 22 minutes where the excess over 20 minutes is purely political advertising. See Report No. 8842, released February 13, 1970, concerning the WXCL standards.

[26] On July 20, 1968, Station WTMP sponsored this promotion, whose proceeds, after expenses, were to be directed to "the WTMP Scholarship Fund to be divided between Hillsborough, Polk, and Pinellas Counties".

be replaced and that the station would give $525 to their fund by June 12, 1970. According to the affiants and a former announcer at Station WTMP, none of the money collected (approximately $1,150) was ever donated to any scholarship fund, including the affiants' Disadvantaged Student Loan Fund. It is alleged that the "Soul Night" proceeds were used to repair damage caused by a fire at the station's offices. Petitioner also contends that in mid-1968 Station WTMP defrauded one of its advertisers, James Brown Productions, by airing only $600 worth of the $900 in spot advertising it purchased and by mis-applying the remaining $300 to the account of the advertiser's former manager, George Grogan, against whom the station had a disputed claim. According to petitioner, the advertiser inquired at that time concerning the amount of spot announcements presented on its behalf and was informed by the salesman concerned that $900 worth of advertising was broadcast.[27] It is further alleged that this salesman, who subsequently became the general manager at Station WTMP, had earlier been accused by the station's management of improperly withholding money from his station accounts. Affidavits, in support of these contentions, are supplied from the station's former program director-announcer and its former traffic manager.[28]

22. The licensee does not dispute the allegations raised by Columbia Citizens. Rather, it argues that "[N]one of the allegations is relevant to a resolution of the WOIC renewal application." We disagree. The acts complained of arose in the operation of a broadcast station, whose corporate licensee was controlled by WOIC's principal stockholder.[29] It is well established that serious misconduct in the operation of a broadcast facility reflects upon the basic qualifications of the licensee and its principals and can be considered in other Commission proceedings involving those same persons. *E.g., Faulkner Radio, Inc.*, 15 FCC 2d 780, 15 RR 2d 285 (1968); and *Walter T. Gaines (WGAV)*, 25 FCC 1 387, 17 RR 165 (1958), reconsideration denied 26 FCC 460, 17 RR 185 (1959). Mr. Speidel's awareness of or involvement in these matters is not apparent from the pleadings before us; nor can we determine at this time whether Speidel paid insufficient attention to the operation of Station WTMP or unreasonably delegated his responsibilities and obligations to other station officials. In any event, however, the

[27] In August, 1970, the advertiser requested an accounting of the money it spent at Station WTMP in 1968. By letter of August 18, 1970, a copy of which is submitted by petitioner, the Speidel corporation's comptroller replied that "we are unable to supply the information you request from the station records."

[28] The remaining allegations, which are based on the statements made by three former Station WTMP announcers, largely relate to their terms of employment and rates of compensation while at the station—matters in which the Commission has declined to interfere, absent a clear showing that the licensee's dealings with its employees has contravened law or adversely affected the program service rendered to the public. Here, the required showing has not been proffered. Petitioner's other allegations, which are again based upon the uncontroverted statements of these former employees, do not raise a material and substantial question of impropriety on the part of the station or its management. Significantly, there is no showing that the actions complained of were unreasonable or impermissible. Compare *KSID, Inc.*, 22 FCC 2d 833, 18 RR 2d 1187 (1970); and *United Television Company, Inc. (WFAN-TV)*, *supra*, 18 FCC 2d at 865–67, 16 RR 2d at 624–28. Further consideration of the foregoing matters does not appear warranted at this time.

[29] At the time of the alleged misconduct, the corporate licensee of Station WTMP was wholly owned by Speidel Broadcasters, Inc., whose 99.45% stockholder was Joe Speidel, III. According to the licensee, Speidel, who was the president of the Station WTMP licensee, "is actively engaged in the supervision of each of [his] stations, and visits several of the stations every month." See para. 2, *supra*.

ultimate responsibility for the alleged wrongdoing of Station WTMP's officers and employees clearly rests upon this major principal. See *Star Stations of Indiana, Inc.*, 19 FCC 2d 991, 993, 17 RR 2d 491, 493–94 (1969); *Robert D. and Martha M. Rapp*, 12 FCC 2d 703, 13 RR 2d 32 (1968). In view of the seriousness of the questions raised [30] and the licensee's virtual reticence with respect thereto, the Commission is constrained to specify appropriate issues to resolve those questions at a hearing.

ULTIMATE CONCLUSION

23. In the judgment of the Commission, substantial and material questions of fact have been raised with respect to the adequacy of the licensee's efforts to ascertain the community needs and interests of the areas served by Station WOIC and the means by which it proposed to meet those needs and interests. The pleadings also raise serious questions concerning misconduct at a station controlled by the licensee's major principal. The Commission is, therefore, unable to make the statutory finding that a grant of the renewal application for Station WOIC is consistent with the public interest, convenience, and necessity, and is of the opinion that the foregoing matters should be explored in an evidentiary hearing.

24. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned license renewal applications, ARE DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether standard broadcast Station WTMP, while under the ownership and control of Joe Speidel, III, engaged in fraudulent billing practices.

(2) To determine, with respect to the aforenoted period, the facts and circumstances surrounding the Station WTMP promotion, "Soul Night", and the use of the proceeds therefrom.

(3) To determine whether, on the basis of the facts adduced in response to the foregoing issues, Joe Speidel, III, an officer and principal of the corporate licensees of Stations WTMP and WOIC, participated in or failed to exercise adequate control or supervision over the management and operation of Station WTMP and, if so, whether said actions adversely reflect upon the qualifications of WOIC, Inc., to be a Commission licensee.

(4) To determine the efforts made by WOIC, Inc., to ascertain the community needs and interests of the areas served by Station WOIC and the means by which the licensee proposed to meet those needs and

[30] As we noted in our Memorandum Opinion and Order concerning fraudulent billing practices, "misrepresentations by licensees in any and all billing practices . . . certainly reflects adversely on the qualifications of a licensee and, to a degree, on the industry as a whole. The public interest, convenience and necessity clearly require reasonable ethical business practices in the industry—specifically on the part of individual broadcasters. It is within the Commission's authority, and is its responsibility, to take whatever action is appropriate to check these practices, which essentially amount to the use of broadcast facilities for fraudulent purposes." 23 FCC 2d 70, 71, 19 RR 2d 1506, 1508 (1970). Also see Public Notice, FCC 72–1090, released December 7, 1972. Of similar import is the possible misappropriation of proceeds from "Soul Night" and the resulting deception upon the public.

interests during the period the 1969 application was in deferred status (*i.e.*, December 1, 1969 through December 1, 1972).[31]

(5) To determine whether, in light of all the evidence adduced pursuant to the foregoing issues, a grant of the application for renewal of license of Station WOIC would serve the public interest, convenience and necessity.

25. IT IS FURTHER ORDERED, That, the petition to deny and supplement thereto, filed by the Columbia Citizens Concerned with Improved Broadcasting, IS DISMISSED; and that considered as an informal objection filed pursuant to Rule 1.587, the aforementioned petition, IS GRANTED to the extent indicated above and IS DENIED in all other respects.

26. IT IS FURTHER ORDERED, That, the motions to expedite consideration of renewal application, filed by WOIC, Inc., ARE DISMISSED as moot.

27. IT IS FURTHER ORDERED, That, the Columbia Citizens Concerned with Improved Broadcasting is made a party to the hearing ordered herein.[32]

28. IT IS FURTHER ORDERED, That, in accordance with Section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence shall be on the party respondent as to issues (1), (2) and (3). The burden of proceeding with respect to issue (4) and the burden of proof with respect to all of the issues herein shall be upon WOIC, Inc.

29. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, WOIC, Inc., and the party respondent, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty (20) days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the Order.

30. IT IS FURTHER ORDERED, That, WOIC, Inc., shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by Section 1.594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[31] See note 11, *supra.*

[32] Several members of Columbia Citizens are purportedly acting in a representative capacity; however, their authority to do so has not been clearly established. Accordingly, we have not named these organizations as parties to the instant hearing. Compare *Radio Station WSNT, Inc., supra.* Similarly, we have declined to accord party status to the 19 community leaders who, in affidavits attached to petitioner's reply pleading, merely "generally support the allegations made by Petitioners against WOIC [and] believe them to be true". Under these circumstances, we believe the future participation of these individuals and organizations in this hearing should be governed by Rules 1.223 and 1.225.

CONCURRING STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS IN WHICH COMMISSIONER NICHOLAS JOHNSON JOINS

In Re Renewal of WOIC (AM)—Speidel Broadcasters, Inc.

Although I concur in the result reached today by my fellow Commissioners, it is my position that issues should have been added to the Designation Order, i.e., whether the station had engaged in discriminatory practices toward the minority community within its service area and failed to serve them thru its programming; and whether the employees of the station whose official titles bespoke of the exercise of power, discretion, and policy making, e.g., program director, news director, etc. were allowed to enjoy and exercise their duties or whether they were effectively or constructively enjoined from the exercise thereof by direction of the principals of the licensee.

However, it is my understanding that such issues may be brought up at the hearing as corollary matters to the "ascertainment" issue, contained in the Designation Order, and I trust that these issues will be developed at the hearing.

F.C.C. 72-1181

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
AUDIO VISUAL COVERAGE OF AGENCY PROCEEDINGS

JANUARY 23, 1973.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), ROBERT E. LEE, JOHNSON, H. REX LEE, REID AND HOOKS, WITH COMMISSIONER WILEY CONCURRING IN PART AND DISSENTING IN PART AND ISSUING A STATEMENT IN WHICH CHAIRMAN BURCH AND COMMISSIONER REID JOINED, ISSUED THE FOLLOWING PUBLIC NOTICE.

AUDIO/VISUAL COVERAGE OF AGENCY PROCEEDINGS

The Commission has been requested by the Administrative Conference of the United States, in accordance with its *Recommendation 32: Broadcast of Agency Proceedings*, adopted June 8, 1972, to give consideration to the implementation of this Recommendation, by establishing a policy in this area and to encourage audio/visual coverage of proceedings involving issues of broad public interest, subject to appropriate limitations and controls.

The Commission agrees with the Conference that there is a need to inform the public concerning administrative proceedings, particularly those of broad social or economic impact, and to encourage participation in and understanding of the administrative process. Although the Commission has not heretofore had a specific regulation or a formally-adopted Commission policy governing the audio/visual coverage of adjudicatory and rule-making proceedings, it has, by actual experience over a number of years, largely accomplished the objectives and purposes of Recommendation 32. However, in light of the ever-increasing interest by the public in Commission proceedings, it has been determined that a formal statement of Commission policy in this regard should be issued. Accordingly, the Commission adopts the following statement of general guidelines for presiding officers, the industry and the public concerning requests for audio and/or visual coverage of Commission proceedings:

A. *Governing Policy*

1. The Commission agrees in principle with the objectives and purposes of *Recommendation 32: Broadcast of Agency Proceedings*, adopted by the Administrative Conference of the United States.

2. Audio and/or visual (i.e. video or film) coverage of many Commission proceedings would be of interest to the public and would enhance public understanding of Commission proceedings. Such coverage should therefore be encouraged subject to appropriate controls and limitations.

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3. Determinations as to whether audio and/or visual coverage of Commission proceedings should be allowed and, if so, the nature and extent of such coverage, shall be within the sound discretion of the presiding officer.

B. *Types of Proceedings*

1. Audio and/or visual coverage of the following types of proceedings is encouraged: (1) Notice and comment rule making proceedings, where an opportunity is afforded to make a public oral presentation; (2) On-the-record formal rule making proceedings; (3) investigatory proceedings where public oral presentations are made on the record to the Commission *en banc* or to a presiding officer, except as limited in paragraph 2 of this Section; and (4) adjudicatory proceedings, except as limited in paragraph 2 of this Section.

2. Audio and/or visual coverage should be excluded in adjudicatory and investigatory proceedings which involve primarily matters of past culpable conduct of an individual and which do not have a substantial and direct impact upon service to the public, if the person in question objects to such coverage.

C. *Prevention of Disruption*

Audio and/or visual coverage of Commission proceedings shall be conducted with minimal intrusion upon the normal course of the proceeding. Requests for such coverage shall be made reasonably in advance of the commencement of the hearing or hearing session sought to be covered. The presiding officer may impose reasonable restrictions on the use of audio and/or visual equipment, so as to maintain the dignity and decorum of the proceeding, and to avoid undue interference with the proper conduct of the hearing. The presiding officer may, in the exercise of his discretion to allow, exclude or restrict coverage of the proceeding, take into consideration the distinctive characteristics of the medium of audio/visual coverage requested—i.e. video (live broadcast or tape-delayed); audio (live broadcast or tape recorded for later broadcast); audio or visual recording for broadcast in its entirety or in edited version; motion picture or still photo coverage; etc.

D. *Protection of Witnesses*

In any adjudicatory or public investigatory proceeding, a witness shall have the right, by stating his request to the presiding officer at any point prior to or during his testimony, to exclude audio and/or visual coverage of his testimony.

E. *Rulings of Presiding Officers*

If a request for audio and/or visual coverage of a proceeding or a particular portion thereof is rejected or restricted by the presiding officer, the reasons therefor shall be stated on the record of the proceeding, either by a formal order issued by the presiding officer or by an oral ruling on the record. Appeals from such rulings will not be permitted.

The foregoing policy statement shall be applicable to all pending proceedings, as of January 30, 1973.

STATEMENT OF COMMISSIONER WILEY CONCURRING IN PART AND DISSENTING IN PART IN WHICH CHAIRMAN BURCH AND COMMISSIONER REID JOIN

I fully endorse our adoption of a policy to encourage and facilitate the broadcasting of Commission rule making and investigatory proceedings. The broadcast media have demonstrated that they possess both the technical sophistication and journalistic maturity which will permit the coverage of such issue-oriented events to be a profound public service.

However, I depart from the views of the majority in similarly encouraging, with minor exception, the radio and television coverage of adjudicatory proceedings. Adjudicatory matters, unlike those involved in rule making, are in the nature of trials and center on the rights of individual litigants. I am frankly concerned that, in the

interest of advancing public exposure of governmental processes, we may be unnecessarily infringing on individual freedom and individual privacy. In my opinion, the presence of lights, cameras and microphones may be inconsistent with the dignity, solemnity and proper focus of an adjudicatory proceeding. As Dean Griswold so eloquently expressed it some years ago:

> A courtroom is not a stage; and witnesses and lawyers, and judges and juries and parties, are not players. A trial is not a drama, and it is not held for public delectation or even public information. It is held for the solemn purpose of endeavoring to ascertain the truth; and very careful safeguards have been devised out of the experience of many years to facilitate that process. It can hardly be denied that if this process is broadcast or televised, it will be distorted.[1]

The Supreme Court has also spoken on the matter of televised trials, at least with respect to those which are "notorious". *Estes* v. *Texas*, 381 U.S. 532 (1965). In his concurring statement, Chief Justice Warren concluded that allowing criminal trials to be televised to the public at large violated the Sixth Amendment for federal courts and the Fourteenth Amendment for state courts because it diverts the trial from its proper purpose, the search for truth, and inevitably has an impact on all trial participants; because it gives the public the wrong impression about the purpose of trials and lessens the reliability of such proceedings; and because it singles out certain defendants by subjecting them to a proceeding under prejudicial conditions not experienced by others (*Id.* at 565). The Chief Justice's conclusions on this matter warrant careful consideration. Moreover, while recognizing the importance of a "public trial", I would suggest that such a right belongs to the accused and not to the public (*Id.* at 588, Harlan, J., concurring opinion).

Thus, to whatever extent adjudicatory proceedings before this administrative agency may resemble a trial, I would be extremely reluctant to ignore the sound advice contained in the foregoing precedents. Specifically, I would delete that language in Part B(2) of the Commission's policy which expressly encourages audio and/or visual coverage of adjudicatory proceedings. In this connection, I must also voice my disappointment with the majority's unseemly haste in adopting such an important policy matter without full and considered deliberation on the merits of alternative language which I attempted to propose. In my opinion, such haste in the formulation of policy demeans the administrative process.

[1] Erwin N. Griswold, "The Standards of the Legal Profession: Canon 35 Should Not Be Surrendered", *American Bar Association Journal*, Vol. 48 p. 616.

F.C.C. 73R-66

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Application of JOHN L. BREECE, SIOUX CITY, IOWA	Docket No. 19633 File No. BPH-7840
JIM AND TOM HASSENGER BROADCASTING CO., SIOUX CITY, IOWA For Construction Permits	Docket No. 19634 File No. BPH-7861

MEMORANDUM OPINION AND ORDER

(Adopted February 5, 1973; Released February 8, 1973)

BY THE REVIEW BOARD.

1. Jim and Tom Hassenger Broadcasting Company gave notice of the filing of its application in the *Daily Reporter*, published daily in Sioux City by the Credit Bureau of that city. The daily circulation of that paper is less than 500 and the news consists of court and commercial items. In 1930, the Supreme Court of Iowa ruled that the *Daily Reporter* was a newspaper of general circulation under certain Iowa statutes.[1] In view of this ruling, even though it is not binding on the Commission, the Board is unable to agree with John L. Breece whose petition to enlarge issues is pending before us,[2] that Hassenger attempted to mislead the Commission when it failed "to notify the Commission that it had not advertised in a daily paper of general circulation" as required by Section 1.580(c) of the Commission's Rules.[3] Therefore, the petition will be denied. However, the purpose of Section 311(a)(1) of the Communications Act and Section 1.580(c) of the rules is not well served when a newspaper of limited circulation is used for publication in preference to one with a wide distribution to the general public, and were it not for the above-cited court opinion, the Board would be disposed to enlarge the issues.

2. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed December 13, 1972, by John L. Breece, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[1] *Burak* v. *Ditson*, 229 N.W. 227.

[2] Breece's petition was filed December 13, 1972. Petitioner filed a supplement on December 18, 1972; Hassenger filed an opposition on December 19, 1972; and on December 29, 1972, the Broadcast Bureau filed its comments.

[3] It is noted that on January 11, 1973, the Administrative Law Judge released a Memorandum Opinion and Order refusing to dismiss the Hassenger application on the grounds it had failed to publish in accordance with the Rules. (FCC 73M-39.)

F.C.C. 73–80

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 74, SUBPART K, OF THE COMMISSION'S RULES AND REGULATIONS RELATIVE TO COMMUNITY ANTENNA TELEVISION SYSTEMS; AND INQUIRY INTO THE DEVELOPMENT OF COMMUNICATIONS TECHNOLOGY AND SERVICES TO FORMULATE REGULATORY POLICY AND RULEMAKING AND/OR LEGISLATIVE PROPOSALS	Docket No. 18397

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 31, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, JOHNSON AND HOOKS DISSENTING AND ISSUING STATEMENTS; COMMISSIONERS REID AND WILEY CONCURRING AND ISSUING STATEMENTS.

1. On June 24, 1970, we adopted the *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816, in which we adopted Section 74.-1131—now Section 76.501—of our cable television rules. Petitions for reconsideration and other pleadings have been filed, and we now address the objections.

2. Petitions and informal requests for reconsideration of the *Second Report* were received, during the regular filing period, from—

American Broadcasting Company ("ABC");
Central California Communications Corporation ("CCCC");
Carter Publications, Inc.;
Columbus Cablevision, Inc.;
Fetzer Broadcasting Company;
Gill Industries;
Gross Telecasting, Inc.;
Hazard Television Company, Inc.;
King Broadcasting Company;
Liberty Television, Inc.;
McClatchy Newspapers;
Midcontinent Broadcasting Company;
Monroe Cablevision, Inc.;
Morris, Lloyd P.;
National Association of Broadcasters ("NAB");
National Association of Educational Broadcasters ("NAEB");
National Broadcasting Company, Inc. ("NBC");
Newhouse Broadcasting Corporation;
Post Company;

Stauffer Publications, Inc., and Tribune Publishing Co., filing jointly ("Stauffer");
Susquehanna Broadcasting Corporation;
Triangle Broadcasting Corporation; and
Vincennes University.

Subsequently, late-tendered pleadings were received from Connecticut Television, Inc. ("CTI"), and Broadcast-Plaza, Inc. ("BPI"), and supplementary pleadings were tendered by Columbus, Fetzer, Liberty, NAB, NAEB, Newhouse, and Stauffer. All of these are accepted for filing, and, in addition we have considered, in this context, a related rule making petition by Roanoke Telecasting Corporation.

SUMMARY OF PLEADINGS

3. The respondents variously request that the Commission: (1) rescind Section 76.501 entirely, or with particular respect to television networks or stations (all stations, or UHF or educational stations), either permanently or pending further study; [1] (2) postpone the effective date of the rule; (3) rescind or modify the divestiture requirements, or lengthen the three-year divestiture period, or articulate standards for case-by-case waiver of the rule; or (4) with respect to station-system cross-relationships, substitute some other measure (geographic, economic, audience size, et al.) of co-location for the present predicted-Grade-B-contour standard; or (5) expressly preempt the subject of cross-ownership, to prevent States and local governments from adopting standards more stringent than those adopted by the Commission.

4. *Full rescission of Section 76.501* is urged by CCCC, Columbus, Fetzer, Gill, Monroe, NAB, and Newhouse. Monroe and Newhouse contend that, as a matter of law (Section 4 of the Administrative Procedure Act, 5 USC 553(c)) and policy, the record on which the Commission relied in adopting Section 76.501 was inadequate, in that the rule is justified in the *Second Report* primarily on the basis of theories and speculations unsupported by facts, and that the facts cited in that document are irrelevant. Specifically, Newhouse contends that the statement therein that 46% of the cable systems started in 1966 were "owned by radio or television stations" is irrelevant because it (i) doesn't indicate what percentage was owned by television stations, and (ii) indicates no trend toward domination of cable by broadcasters when considered together with the fact that, as of the date of issuance of the *Second Report*, fewer than 400,000 cable subscribers were served by systems within the Grade B contours of co-owned television stations. Moreover, Newhouse argues, the Commission, having made no determination as to what constitutes adequate communications media competition, cannot properly evaluate the need for remedial, or even preventative, action.

5. NAB cites the "Seiden Report" ("Mass Communications in the United States," filed in Docket No. 18110 in January 1972, six months after adoption of the *Second Report* herein) as proof that "there is a very large diversity of media available to the public, in virtually

[1] Or let UHF stations hold noncontrolling interests in co-located cable systems.

every market regardless of size," to such extent that (apart from unique situations which could be dealt with on an ad hoc basis) "co-located cable television cross-ownership could not and would not significantly affect it." Newhouse and Fetzer cite data regarding some specific cable localities as evidence that adequate media competition exists.

6. Newhouse contends that, if broadcasters are excluded from cable system operation, other large corporations will move in without the broadcasters' record of public service, and it suggests that certain multiple-system operators favor Section 76.501 because it "enabl[es] them to increase their share of the CATV market by eliminating a strong source of competition for local markets." In response to the argument that cable-broadcast cross-ownerships of the sorts dealt with in Section 76.501 would encourage subordination of local-interest cablecasting to more profitable broadcast operations, Newhouse cites the voluntary importation of non-Newhouse TV broadcast signals by a Newhouse system within the Grade B contour of a co-owned television station.

7. Cross-ownership doesn't conflict with the Commission's "many voices" objective, Newhouse contends, since: (1) a cable system brings so many additional "voices" to the television set that any offsetting effects of local-cross ownership become insignificant; (2) a cable system conducting origination cablecasting will presumably focus on *very* local news and public service programming, something a TV broadcaster cannot do, and so station and system programming will not reinforce each other but rather concentrate on different subjects; and (3) cable systems can be (and, Gill notes, under the 1972 cable rules, in many cases are) required to provide access channels for programming not under the system operator's control. Newhouse, Columbus, and NAB assert that the Commission's primary basis for adoption of Section 76.501 was the expectation that cable systems would originate cablecast programming to a significant extent in compliance with the program-origination rule (now Section 76.201(a)), and claim that that basis has been invalidated by the Commission's stay-of-implementation of the program-origination requirement.[2]

8. The Commission's contention, in footnote 2 of the *Second Report*, that "Diversification rules would be desirable even if CATV operations were limited to carriage of broadcast signals and common carrier activities; in view of the limited number of broadcast and newspaper media in all communities, and the potential importance of cable facilities in providing many communications services," is disputed by Newhouse and Columbus on the ground that it "represents an arbitrary assumption of antitrust jurisdiction using patently wrong antitrust theories," since (1) cable and broadcasting are different industries in separate markets, and (2) there is an ample supply of media voices. Moreover, Newhouse argues, the future shape of cable television cannot be foreseen with certainty, and regulatory policies should not be based upon speculative prediction.

[2] The stay was ordered by the Commission after the U.S. Court of Appeals, Eighth Circuit, declared the program-origination requirement null and void. *Midwest Video Corp.* v. *U.S.*, 441 F. 2d 1322 (1971). Subsequently, the Supreme Court reversed that Eighth Circuit decision (406 U.S. 649 (1972)), but the Commission has not yet acted to terminate the stay.

9. NAB contends that, as a result of our adoption of the *Cable Television Report and Order in Docket No. 18397* (37 Fed. Reg. 3251, February 12, 1972), enough is now known about the future shape of cable to warrant rescission of Section 76.501. Specifically, NAB says, under the new rules: (1) the TV broadcast signal carriage by cable systems is now predetermined more than ever by detailed rules, and hence the cable operator is, for the most part, unable to favor a co-owned local television station (or disadvantage a competing local TV station) by his distant-signal-carriage choices; and (2) the emphasis is now on access rather than origination cablecasting (with the cable operator rewired in the top 100 markets to provide at least three access channels beyond his programming control).

10. Newhouse contends that the provisions of Section 76.501 lie beyond the Commission's statutory authority. It argues that nothing in the Communications Act prohibits a broadcast licensee from engaging in any proper type of business; cites a judicial decision for the proposition that the Commission lacks statutory authority to adopt a rule barring newspaper publishers from broadcast station ownership; and from that infers that the Section 76.501 ban on television-cable cross-ownership also exceeds the Commission's statutory authority. Newhouse further argues that the Commission's power to regulate cable is limited to that reasonably ancillary to regulation of broadcasting, and questions whether cable system ownership may be included under that rubric.

11. *Rescission of Section 76.501(a)(1), regarding cross ownership et al. of cable systems with national television networks*, is urged by two of the three national TV broadcast networks, ABC and NBC. In support of this request, they argue that: (1) Absent evidence of illegality or wrongdoing, adoption of the network cross-ownership ban is unfair to the networks and contrary to legal tradition in that (i) without good cause it bars an industry from experimenting with or adopting a new technology in developments related to its normal function of program distribution, and (ii) it is unheard of in American law (under such circumstances) to impose per se disqualifications from future business interests and require divestiture of a business lawfully acquired or engaged in (NBC). (2) The Commission's *Notice ... in Docket No. 18397* did not inform parties that the question of network ownership of cable systems would be decided, and thus the rule making "notice" requirements in the Administrative Procedure Act have not been met; although some respondents to the notice commented on the network question, only one month (April 3–May 12, 1969) was allowed for reply comment; and the question of TV broadcast network cross-ownership with cable systems is a major one which warrants full investigation and full opportunity for comment (ABC). (3) The Commission's fear that television network ownership of cable systems might inhibit cable development is contradicted by the fact that the television industry itself was developed to a large degree by radio broadcast licensees and networks, and newspaper and theatre owners (ABC, NBC). And (4) the prohibition against network ownership of cable systems is premature, and could hamper cable growth, since (i) only a few cable subscribers are served by network-owned systems (ABC, NBC); (ii) cable television is at too early a stage of

development, and its expansion and innovation needs and risks are too great for the Commission to deny ownership to those whose natural interest and communications innovation history may be the greatest; (iii) exclusion of TV network investment in cable systems will be without any justification if cable systems become essentially common carriers as a result of the Commission's rule making decisions designed to promote program diversity; and (iv) there is no problem of overconcentration of network ownership in cable television now, and there will be time enough to deal with the problem, if it is one, when the Commission knows what the role of cable is to be (ABC).

12. *Rescission of Section 76.501(a)(2), regarding cross ownership et al. of cable systems with co-located television broadcast stations*, is urged specifically by BPI, Carter, Columbus, CTI, Gill, McClatchy, and Midcontinent; and implicitly by Fetzer, Hazard, Liberty, and Monroe. Monroe objects to the local station-system cross-ownership ban on the ground that it prevents station licensees, who receive no compensation from cable systems for television broadcast carriage, from at least getting indirect compensation via ownership of cable systems in their own areas. Monroe further contends that the station-system cross-ownership ban reverses the Commission position expressed in Docket No. 15415; that the Commission's rationale for that reversal (i.e., that its previous view had not taken local cable casting and other potential nonbroadcast communications services by cable systems) since, during the pendency of Docket No. 15415, the Commission could not have been unaware of these potentialities; and that the Commission's attempt, via Section 76.501(a)(2), to foster competition between cable systems and co-located TV stations, is inconsistent with its claim of jurisdiction over cable on the ground that cable regulation is necessary to protect TV stations from cable system competition.

13. CTI contends that the station-system cross-ownership ban is insufficiently supported in the record because it is based not on allegations or evidence of any existing pattern of abuse, but rather on unjustified fear of potential anticompetitive abuse and unwarranted expectations that cable would play a pivotal role as an opinion molder; Liberty notes that the *Second Report* contains no findings regarding the degree of *local* cross-ownership in the United States; and Gill notes that no showing was made of any abuses in system operators' control of origination cablecast channels. McClatchy states that, as of January 1, 1970, fewer than 150 operating cable systems, serving 380,000 subscribers (6% of the number of systems, and 8.4% of the number of subscribers, at that time) were owned by parties with an interest in a co-located system, and that these 380,000 subscribers constituted only 0.6% of the then 62,213,900 TV homes in the United States; and concludes, in the light of these figures, that the alleged problem is deminimis. CTI contends that the station-system local-cross-ownership ban reflects a mere mechanical transference of existing broadcast principles to the emerging cable industry, as evidenced, it says, by the across-the-board application of the ban to UHF and VHF stations, commercial and noncommercial stations, and majority and minority interests, all without regard to the number and kinds of communications media serving a particular area. Such

"mechanical transference" is inappropriate, CTI says, because of the "fundamental technical and competitive distinctions between broadcasting and cable communications."

14. Such alleged "mechanical transference" is particularly inappropriate, CTI argues, in the light of developments subsequent to the issuance of the *Second Report*. In particular, CTI contends, it is becoming increasingly unlikely that cable operators will play a significant role in the influencing of opinion. Rather, it asserts, there is a growing probability that cable operators will have little control over their systems' nonbroadcast programming, and that even major systems may not be required to originate cablecast programming at all. This last point raises an important threshold question, CTI says, in that the Commission's adoption of Section 76.501 was strongly influenced by the expectation that most major cable systems would be under a regulatory obligation to act as significant programming media. Monroe asserts that, in any event, cable operators have no interest in opinion influencing, and that their cable origination would affect public opinion mainly by providing access to multiple voices in the community. Gill comments that a cable system's ability to influence its subscribers' opinions is restricted by, inter alia, the existence of competing media, the limited amount of cable origination (as a result of cost considerations), and the application of "political broadcast" and "fairness doctrine" rules to origination cablecasting. BPI urges the Commission to permit TV broadcasters to take part in the development of co-located systems, both because doing so would be consistent with the Commission's desire to foster cable growth in the nation's largest market areas and because it would benefit viewers for television broadcasters who know their own areas' needs and interests, and who know how to do programming, to have a role in local cable development.

15. *Exemption of UHF television stations from the scope of Section 76.501(a)(2)* is favored by CTI and Roanoke [3] and opposed by BPI. In support of an exemption for UHF stations, CTI states that: (1) over the years, the Commission and Congress have adopted several measures to foster UHF in view of the technical and competitive disparities between UHF and VHF television, and the courts have regularly viewed such actions as valid exercises of Commission and Congressional discretion; (2) but UHF and VHF are still far from competitive equals and there is continuing a need to foster UHF development; and (3) exemption of UHF television stations from the purview of Section 76.501(a)(2) would materially foster the development of UHF television and would be fully consistent with regulatory policies previously adopted for that purpose. (As alternatives, if necessary, to full exemption of UHF stations from the local-cross-ownership ban, CTI urges that Section 76.501(a)(2) be amended to permit a financially marginal UHF station to hold a minority interest in a co-located cable system, and to provide that UHF station-cable system cross-ownerships shall be dealt with on a case-by-case basis.) Roanoke urges the Commission to allow UHF stations to have ownership

[3] Also, in July 1972, the All-Channel Television Society filed a rule making petition requesting amendment of Section 76.501 to permit a UHF station to hold an ownership interest in a co-located cable system.

interests in co-located cable systems on the grounds that (4) a UHF station with an ownership interest in a co-located cable system can supply it with program origination facilities and expertise, and, (5) if the cable system is successful, it can bring added revenues to a financially straitened UHF station which has an interest in it.

16. BPI, on the other hand, contends that a special exemption for UHF stations would be unsound because: (1) It would confer an undue competitive advantage upon certain UHF stations (e.g., profitable network-affiliated stations in such top-50 markets as Hartford-New Haven, which is served by only two VHF stations). (2) Even in the case of marginal UHF stations, it is not clear that cable system local cross-ownership would improve the UHF station's financial condition or public service compatibility; indeed it is equally likely that the cable system adjunct would be a drain on the UHF station's resources. (3) An exemption predicated on the plight of struggling UHF stations would in no way further the Commission's cable television objectives, and should therefore not be allowed. BPI argues that: (i) The case for relaxing the cross-ownership ban rests largely on the contribution that broadcasters can make to the development of cable in their service areas. (ii) Judged in that light, a rule which would permit the class of TV stations with the least to contribute to enter cable business locally, but which would preclude entry by those TV licensees with the most to contribute, is hardly calculated to maximize the benefits of cable service to the public. (iii) To the extent that UHF stations *are* in a position to provide such assistance to cable television in an ownership capacity, they stand on no different footing than profitable VHF stations, and there is no reason why such UHF stations should be accorded preferential treatment.

17. *Exemption of educational television stations from the scope of Section 76.501(a)(2)* is urged by NAEB, Vincennes University,[4] and an individual educator, Mr. Lloyd P. Morris, of Elmwood Park, Illinois. Their arguments are analogous in many respects to those contained in comments on the subject filed in response to the *Notice of Proposed Rule Making and of Inquiry in Docket No. 18891*, (35 F.R. 11042, July 9, 1970) pursuant to footnote 1 of that document. NAEB asserts, first, that the original *Notice . . . in Docket No. 18397* did not discuss the need for or desirability of a prohibition against educational television station-cable system local cross-ownerships, and that the *Second Report* sets forth no reasons for such a prohibition. However, NAEB continues, it is clear that the thrust of the Commission's comments and attention, with respect to TV station-cable system, concerned *commercial* stations. Second, NAEB cites the Commission's acknowledgment (in footnote 1 of our *Notice . . . in Docket No. 18891*) that cross-ownership with a cable system may be financially beneficial to an ETV station. These financial opportunities alone warrant deletion of the present ETV-cable local-cross-ownership ban, NAEB urges, because "most of the difficulties confronting educational television stations are directly traceable to the lack of adequate funding. . . ." In response to the Commission's observation that other potential sources of funds are available to ETV stations, NAEB

[4] Licensee of ETV Station WVUT, Vincennes, Indiana, and operator of cable systems at Vincennes and Washington, Indiana, and Bridgeport and Lawrenceville, Illinois.

replies that the operation of a local cable system would (i) be directly available to a local ETV station, (ii) be based on its own industry and initiative, and (iii) avoid the "oftentimes tortuous delays involved in securing funds from more traditional sources." Third, NAEB argues, ETV stations, as owners of cable systems, would make good use of cable's potentialities for educational and public service programming, in that: (i) they would make full use of the cable's broadband and two-way capabilities; (ii) they could coordinate the programming activities of the ETV station and the cable system so that (*a*) imported signals would not have an adverse effect on the ETV station's offerings, and (*b*) distant ETV signals could supplement local ETV station offerings but harmful duplication would be avoided; and (iii) ETV stations have good knowledge of local tastes, needs, and desires by virtue of their deep and broad-ranged roots in the community. Fourth, Vincennes notes that the Commission used a "multiple voices" argument in support of its adoption of both Section 76.501(a)(2) and recent amendments to the broadcast multiple-ownership rules (in the *First Report and Order in Docket No. 18110*, 22 FCC 2d 306, released April 6, 1970), but that it specifically excluded ETV stations from the applicability of the Docket No. 18110 amendments. (Also, some of the comments filed in Docket No. 18891 argue that the "multiple voices" argument does not properly apply to ETV stations because, in the typical case, ETV station governing boards memberships have been deliberately chosen to represent a broad range of community interests.)

18. *A stay of implementation of Section 76.501* is urged by Gill, Hazard, NAB, and Triangle. Gill, Hazard, and Triangle contend that it is unfair to single out TV broadcast-cable cross-ownership for early disposition because the Commission cannot logically isolate the questions pertaining to such cross-ownerships from the questions pertaining to cross-ownerships of cable systems with other mass-communications-media entities. The NAB urged deferral of the effective date of Section 76.501 until the true nature of cable is clarified and until pertinent questions raised in the Commission's broadcast-multiple-ownership docket (No. 18110) are clarified.

19. *Rescission or modification of the divestiture requirement:* Most of the petitioners urge (1) rescission of the divestiture requirement of Section 76.501, either (i) totally, or insofar as that requirement applies to (ii) networks or (iii) television stations; (2) extension of the present three-year divestiture grace period; or (3) enunciation of appropriate standards for (i) general exceptions to, or (ii) case-by-case waivers of, the divestiture requirement.

20. *Rescission:* NAB, urging total rescission of the divestiture requirement, cites a series of Commission actions which, in NAB's view, encouraged a number of broadcasters to enter the cable television field in the mistaken belief that subsequent divestiture would not be required. In the light of that history, NAB believes, the imposition of a divestiture requirement constitutes "a lack of elemental fairness." NBC criticizes the divestiture requirement, insofar as it applies to the networks, as unfair, invalid, and contrary to the public interest in view of an absence of findings of wrongdoing, illegality, or monopoly,

and failure to consider the networks' contributions to cable television during cable's experimental period.

21. *Re co-located television stations:* Several of the petitioners (CCCC, Carter, Columbus, CTI, Fetzer, Gill, Liberty, McClatchy, Midcontinent, Newhouse, NAB, Post, and Stauffer) urge rescission of the divestiture requirement insofar as it applies to co-located television broadcast stations. In support of such rescission it is argued that (i) procedural requirements have been violated; (ii) Commission precedent has been ignored; (iii) the divestiture requirement is injurious to present owners; (iv) the record is insufficient to justify the requirement; (v) mandatory divestiture is an extreme and unlawfully harsh remedy; (vi) it is discriminatorily ill-timed; and (vii) this timing forces cable operators to make "gambling" decisions regarding divestitures.

22. The procedural requirements of Section 316(a) of the Communications Act were violated in the adoption of the mandatory-divestiture requirement, according to Columbus, McClatchy, Midcontinent, and Newhouse. They argue that: (1) The Commission asserts, in paragraphs 17 and 18 of the *Second Report*, that, in banning certain cross-ownerships with cable systems, it is exercising a licensing function with respect to cable; but (2) Section 316(a) prohibits modification of "Any station license . . . by the Commission . . . until the holder of the license . . . [has] been given reasonable opportunity to show cause why such order of modification should not issue, and Section 316(b) provides that the burdens of proof and of proceeding with the introduction of evidence are on the Commission; and yet (3) cable operators with interests in co-located television stations have been afforded an opportunity for a public hearing. Although (4) it is conceded that the Commission through rule making change the *operating* requirements of existing licensees (*California Citizens Ass'n* v. *U.S.*, 375 F 2d 43 (9th Cir. 1967), (5) that does not mean that the Commission may use the rule making to negate the provisions of Section 316(a) (id., p. 51), e.g., by the adoption of a rule which is (as in the case of the mandatory-divestiture provisions of Section 76.501) individual in impact and condemnatory in purpose. (6) The divestiture provision modifies the existing license of certain television stations by conditioning the continuance of that license upon their divestiture of co-located cross-owned cable systems. (7) The individual-impact character of this is heightened by the fact that only 400,000 homes, fewer than 0.07 percent of all TV homes, are served by cable systems within the predicted Grade B contours of co-owned TV stations.

23. The divestiture requirement is contrary to Commission precedent, argued Columbus, Fetzer, McClatchy, Newhouse, and Stauffer; and (Fetzer adds) it is particularly harsh treatment of broadcasters who had been led to expect otherwise, acted in reasonable reliance thereon, and are now threatened as a result with great financial loss.

24. NAB urges the Commission to "grandfather" local cross-ownerships in being prior to the adoption of Section 76.501 on the ground that the economic losses and uncertainties resulting from the divestiture requirement are of a far higher magnitude than damage caused by a prospective application of the rule. Several of the petitioners

(CCCC, Carter, Columbus, Gill, Newhouse, and Post) cite the impact of the divestiture requirement on their own business operations as examples of the injury broadcasters with local cable interests. They refer to the long lead-time between capital investment and fully profitable operation, and the unlikelihood of recovering their investments in disposing of cable systems which have not matured to the point of fully demonstrating their potential profitability. They express little confidence in the Commission's hope that broadcasters will be able to negotiate exchanges of cable systems with broadcasters in other areas.

25. Petitioners contending that the evidence in the record is insufficient to warrant mandatory divestiture of cross-relationships between co-located cable systems and television systems state essentially the following: (1) The record includes no evidence of abuses of existing such cross-ownerships; nor is there any evidence of anticompetitive effects of existing cross-ownership situations, or of a reduction in the number of opinion-influencing voices available to people in communities served by cable systems within the Grade A or B contour of a jointly owned television station. Moreover, cable systems will have "access" channels over which diverse opinions may be expressed without the control of the cable operator (Columbus, McClatchy, Midcontinent, Newhouse). (2) The Commission adopted the cross-ownership ban on the basis of its "expertise" and in the light of its new requirement of program origination (id.). However, "expertise" is not an adequate basis for requiring divestiture of investments made in reliance upon previous Commission policies (Midcontinent), and the Commission's hope that it may foster program origination by means of the divestiture requirement is purely speculative since (i) most cable systems (whether station-owned or not) do not engage in program origination, and (ii) the program-origination rule provides no standard as to the types and amount of origination required (Fetzer). (3) The lack of record evidence supporting divestiture is all the more glaring when compared with the Commission's approach in adopting rules restricting broadcast-ownership combinations: (i) The broadcast duopoly policy gradually developed case by case. (ii) The chain-broadcast rules were adopted following a six-year process, including extensive hearings before a five-member special committee (Columbus, McClatchy, Midcontinent, Newhouse). (iii) In the present proceeding, the Commission did not give affected parties a reasonable opportunity to supply data, unlike broadcast Docket No. 18110, in which the Commission gave parties six months additional time for filing of comments (Stauffer). (4) The Commission made no effort to demonstrate that the alleged problem is not de minimis. It fails to ascertain and show (i) the extent of broadcast-cable cross-ownership, and (ii) the impact of the *Second Report* within Grade B contours of cross-owned stations (it has given no indication whether the new cross-ownership prohibition will affect 10% or 90% of the cable systems and/or subscribers in the United States. In contrast, in Docket No. 18110, the Commission published an exhaustive abstract, "Newspaper-Broadcast Joint Interests as of November 1, 1969". (Id.) (5) In fact, the available data (see paragraph 13 supra) indicates that the "problem" is, at most, de minimis (id.).

26. But, even assuming the existence of a problem, several petitioners argue, mandatory divestiture is a harsh remedy which is unwarranted where, as here, lesser remedies would do. In *Timken Roller Bearing Co.*, v. *U.S.*, 341 US 593, 603 (1951), they note, the U.S. Supreme Court ruled that "divestiture . . . is not to be used . . . without regard to the type of violation or whether other effective remedies, less harsh, are available". How, they ask, can the Commission impose mandatory divestiture upon cable operators who are innocent of misconduct in light of the Supreme Court's indication in *Timken* that it would not require divestiture in most cases in which actual wrongdoing was shown? They suggest, as less drastic measures sufficient to serve the Commission's purposes: (1) application of the broadcast "fairness doctrine" and "political election" rules to cablecasting; (2) mandatory operation of a "common-carrier" cablecast channel; and (3) reliance upon prospective application of the cross-ownership ban, since future sales of stations and systems would gradually eliminate "grandfathered" cross-ownerships. (CCCC, Columbus, Fetzer, McClatchy, Midcontinent, Newhouse, and Stauffer.)

27. Finally, petitioners contend that the divestiture requirement is discriminatorily ill-timed in that (i) the Commission "prematurely" ordered a break-up of the "most insignificant" of the media combinations, cable-broadcast, just after postponing action on other cross-ownership proposals in Docket No. 18110 to permit further study (McClatchy and Midcontinent); and (ii) it is inconsistent and unfair to require the licensee of a TV station in a community to dispose of his interest in a cable system there while permitting the owner of a newspaper and AM and FM stations in that community to acquire a cable system there (Gill). Gill also argues that this non-simultaneity of Commission action on the various cable cross-ownership questions unreasonably compels an entrepreneur with cable, TV, and AM and FM radio interests in the same area to gamble in deciding whether to divest himself of his TV station or the cable system—in that subsequent Commission rule making decisions may force him to divest himself of more of these interests than he would have had to if he could have anticipated those later decisions.

28. *Modification of the divestiture requirement:* CCCC notes that the Commission has mentioned the possibility of divestiture-requirement waivers, but has not generally articulated its criteria for grant of such waivers; and it urges the Commission to reduce the time and expense involved in the waiver process by public announcement of specified waiver criteria. Gill urges a stay of the divestiture requirement in view of the little time remaining of the originally specified three-year divestiture period, and the Commission's inaction to date on petitions for reconsideration. Without such a stay, Gill argues, "a cross-owner must soon determine which of his properties he will divest, and diligently seek a buyer, notwithstanding his lack of firm knowledge as to whether divestiture will be required after the Commission's reconsideration". If a specified divestiture period is deemed necessary, Gill says, it should be of five years duration beginning when the Commission has resolved all of the communications media cross-ownership questions—five years duration to avoid needless injury to present owners and to be consistent with Commission decisions in other, com-

parable situations, and the delayed starting time for reasons indicated in paragraph 27 supra. In addition, Gill urges that a cable operator be allowed to complete development of his cable facility pursuant to his pre-July 1970 plan even if that involves franchises acquired after July 1, 1970, because failure to do so will prevent numerous communities islanded within a cable facility's general service area from obtaining cable service for some time and will needlessly depress the resale value of the cable system, and because, "So long as it is understood that expanded portions of the system are to be divested along with the rest, there is no reason why the operator should not be permitted to . . . construct and operate newly franchised segments of his system until such time as the whole system is sold."

29. *Cross-interest:* The Commission is requested by CTI,[5] King, and Post to permit television station licensees to have a minority interest in co-located cable systems, on the grounds that prohibition of such cross-relationships is unprecedented and unnecessary to achieve the Commission's purposes (Post, King), that it denies a source of revenue that financially marginal stations may need in order to continue their broadcast service (CTI), and that it deprives cable systems of investment funds from television licensees who may wish to assist a cable capable of increasing their station's audience. If the Commission aim is arm's-length competition, King asks, would it not suffice to limit the "any interest" ban to the primary area and omit the secondary area?

30. *Replacement or modification of the "predicted Grade B contour" measure of co-location* is urged by BPI, Carter, CTI, King, Liberty, McClatchy, and Midcontinent. In King's view, the Grade B contour marks off a forbidden area which is much too large, and thus may deprive "outlying communities" within that contour of needed cable service even though in such places the cable system and the central-city TV station are not rival outlets.[6] King recommends the substitution of either a smaller, fixed-mileage area (e.g., the 35-mile zone recommended by McClatchy and Midcontinent) or, where pertinent, the U. S. Census Bureau-determined Standard Metropolitan Statistical Area ("SMSA") in which the station operates. King argues that a cable system within a small outlying community is not a local rival to a central-city station because the station cannot be a "local outlet" there whereas the system will find it advantageous to focus, in its cablecasting, on the needs and interests of its own community. Moreover, King notes, that, in communities more than 35 miles from the center of the station's market, distant-signal importation (a form of competition far more formidable than cablecasting) would not seriously affect even marginal UHF and small-market stations. Midcontinent contends that outlying communities within a cross-owned station's Grade B contour are unlikely to be particularly influenced by that station's current affairs programming because such communities (i) typically receive many "overlapping stations," and (ii) in any

[5] With particular reference to financially marginal UHF stations.

[6] King concedes that there may be outlying communities, in the station's secondary area, which are large enough to support cable systems truly competitive with a cross-owned central-city TV station, but suggests that special rules could be devised to deal with such situations.

event are small-townish in outlook, unlike the orientation of a big-city TV station.

31. King further contends that advertising solicitation by cablecasters would not cause any problems for the central-city station, since local firms in TV stations' secondary zones can't afford TV broadcast advertising, although they can be a good advertising source for cablecasters. Also, King argues, ownership of cable systems within its service areas does not give a TV station a competitive advantage over other TV stations in the same market since (1) systems are required by Commission rules to carry the signals of all same-market stations and to give them equal rights with respect to channel position, program nonduplication, etc.; and (2) the Commission's control over TV licensees who operate cable systems is more effective than its control over non-broadcaster operators of cable systems.

32. Midcontinent and McClatchy challenge the Commission's assertion, in the *Second Report*, that use of the predicted Grade B contour as the co-location boundary line contributes to administrative certainty, by citation of the Commission's statements, in paragraph 48 of the *Notice . . . in Docket No. 18397*, that (i) the predicted Grade B contour varies from station to station and may extend as far as 60 miles from the station's transmitter, and (ii) a fixed-mileage standard would be administratively convenient and would provide certainty to those affected since air-mile distance from a specified point could be readily calculated without reference to contour maps in the Commission's offices or the necessity of an evidentiary hearing to resolve disputes.

33. King[7] contends that a standard resulting in a smaller co-location area than that marked off by the predicted Grade B contour would be consistent with recent Commission actions in other proceedings. King notes that in the broadcast one-to-a-market proceedings, the Commission adopted as its area-demarcation standard not the Grade B but the Grade A contour. Moreover, King continues, in that proceeding the Commission noted that UHF stations and many FM stations still needed association with other local media to facilitate their growth, and thus built cross-ownership exceptions into the rule regarding such facilities in overlap situations. Particularly in secondary areas, King contends, cable is in an even less advanced state than UHF and FM, and should receive similar treatment. King also states that the Commission recently adopted a specific-waiver provision permitting telephone common carriers to provide cable television service to communities that would not otherwise obtain it. It argues that a broadcaster also has a special motivation to provide cable service to remote communities, can do so more economically than other potential owners, and can cablecast programming at less cost than a telephone company can (and is therefore more likely to).[8]

34. CTI suggests[9] that the cross-ownership limitation, if deemed necessary, be limited to those counties in which a station has a net

[7] Citing 22 FCC 2d 306, 312 (par. 22), and 318–19 (pars. 45, 47, and 48) (1970).
[8] King contends that this telephone company-cable system cross-ownership exception relies on waiver rather than a general rule for reasons that do not apply in the context of Section 76.501; i.e., (i) the difficulty of establishing a rational border-delineation standard, and (ii) charges of competitive abuse.
[9] With particular reference to UHF television stations.

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weekly circulation of at least 70% (i.e., those areas in which "the broadcaster may at least arguably be in a position to influence opinion to a significant degree"). BPI, citing its own situation, considers it unreasonable to bar television station ownership of a cable system in a county in which Commission-endorsed data indicates that the station is not "significantly viewed". Liberty suggests three other alternatives which, alone or together, would in its opinion strike a balance between the goals of (i) insuring substantial program diversity, and (ii) fostering development of cable (as an essentially passive reception facility) in sparsely settled areas. Specifically, Liberty recommends (1) limitation of the station-system cross-ownership with systems which have more than 2500 subscribers within the station's community of license, SMSA, or Area of Dominant Influence ("ADI"), and (ii) providing that the total number of subscribers to systems which are cross-owned with a TV station and within its Grade B contour shall not exceed 15 percent of that station's NWC, or (3) exemption of systems with fewer than 2500 subscribers from the cross-ownership ban.[10] On behalf of these three proposals, Liberty states: re (1), that the top 100 markets contain the vast majority of TV homes, are the source of most TV revenue, and hold the real promise for program origination by cable systems; that below-top-100 markets offer little opportunity for large systems with potential for significant program origination, but do need cable systems to fill over-the-air signal reception gaps; and that ultimately, cross-ownership of TV stations and cable systems in small markets may be necessary to maintain the viability of local over-the-air TV broadcast facilities there; re (2), that the proposed 15% limitation would prevent a broadcaster from obtaining a subscriber base sufficient to raise a question of undue concentration of control; and, re (3), that TV station cross-ownerships with co-located systems with fewer than 2500 subscribers (i) pose no problems with respect to programming diversity since such systems normally cannot engage in program origination anyway, and (ii) pose no threat of undue concentration of control.

35. *Preemption:* BPI urges that, if the TV station-cable system local-cross-ownership prohibition is rescinded or substantially modified, the Commission preclude State and local authorities from imposing more restrictive cross-ownership limitations than ours.

DISCUSSION OF PLEADINGS

36. As indicated in the foregoing paragraphs, the respondents favoring rescission of the cross-ownership et al. provisions in Section 76.501—either totally or insofar as they apply in particular to national broadcast television networks, or to co-located television stations (all,

[10] In a recently tendered supplementary pleading, Liberty substituted the following alternatives: (1) restrict the general ban on cross-ownership of co-located TV stations and cable systems to the top 100 markets; in smaller markets, limit the ban to systems with 10,000 or more subscribers (in order not to discourage at least limited cable origination); or (2) (i) prohibit TV station-cable system cross-ownership within the community of license; (ii) authorize cross-ownership of smaller systems (i.e., with fewer than 10,000 subscribers) outside of the community of license; but (iii) provide that in no event shall the total number of subscribers of the cross-owned systems within the station's predicted Grade B contour exceed 25% of the net weekly circulation of the cross-owned TV station; or (3) exempt systems with fewer than 7,500 subscribers from the cross-ownership ban.

or commercial UHF, or noncommercial educational)—argue variously that: the record relied upon by the Commission was insufficient; additional facts submitted by the respondents negate the Commission's conclusions; the Commission lacks statutory authority to impose such restrictions; inadequate notice of proposed rule making was given to network cross-owners; adoption of the rule reverses the Commission's previous position expressed in Docket No. 15415; and (6) developments subsequent to the adoption of Section 76.501 have washed away its foundations.

37. The question of notice of proposed rule making regarding cross-ownership of cable systems with networks diminishes against the circumstances that: (i) in view of the introduction of the question of notice, we have reviewed ABC's and NBC's substantive arguments regarding network-cable cross-ownership, contained in their petitions for reconsideration, in the same manner, according them the same weight, as if their submissions had been received before the *Second Report* was issued; and that, (ii) with respect to the relation of this procedural question to the divestiture provisions applicable to networks, the three-year divestiture grace period specified in the *Second Report* does not expire until this coming August, and we have in any event (in view of the considerable passage of time between the issuance of the *Second Report* and this memorandum opinion and order) decided to extend the grace period even further in order to avoid hardship to existing cross-owners.

38. Although we have given thoughtful consideration to the petitioners' other contentions, we remain persuaded that the provisions of Section 76.501 prohibiting ownership, operation, control, or interest of a cable television system with a national broadcast television network or a co-located television broadcast or translator station, and requiring divestiture of such prohibited cross-relationships by a date certain, are in the public interest and should continue in force.

39. Our adoption of these provisions—designed to foster diversification of control of the channels of mass communication—was guided by two principal goals, both of which have long been established as basic legislative policies. One of these goals is increased competition in the economic marketplace; the other is increased competition in the marketplace of ideas.

40. We did not choose to wait until cable reached maturity before acting to achieve these goals. Having grappled over the years with the problems of cross-media control of radio and television stations, by national broadcast networks, and by newspapers and other broadcast stations in the same communities and market areas, we had become increasingly persuaded, first, that cross-media control is generally undesirable (although temporary exceptions are sometimes warranted); second, that the evidence of previously developed electronic mass media indicated that, in the absence of regulatory prohibition, considerable cross-media control of cable television could be expected, and that tendencies in that direction had already begun; and, third, that cross-media control of cable would become increasingly difficult to halt and reverse as cable grew if its growth were not accompanied by early-imposed regulations designed to foster diversification of control.

41. Some of the data leading to the second conclusion were summarized in paragraphs 9 and 10 of the *Second Report*. That was not intended to demonstrate that "abuses" of cable system ownership were taking place to any significant degree, or that broadcasters' control of cable facilities had already advanced to major proportions. What it did demonstrate was that the major broadcast television networks were already such dominant influences in the television field that any further expansion of their ownership or control into the new and growing cable television industry was per se undesirable, and that such network involvement in cable should be stopped and turned around before it became entrenched; and that about 30% of the cable systems in existence in December 1968, were broadcaster-controlled.[11] Newhouse in its petition for reconsideration indicates that, as of the date of issuance of the *Second Report*, approximately 400,000 cable subscribers—close to 10% of the total number of cable subscribers at that time—were served by systems within the predicted Grade B contours of television stations under common ownership with those systems.

42. CTI characterizes our adoption of cable cross-ownership rules as a "mechanical transfer" of broadcast concepts to cable notwithstanding "fundamental technical and competitive distinctions between . . . [them]." Whatever distinctions may exist between TV stations and cable systems, it is nonetheless true that actions taken by cable system operators—to carry or not carry certain distant stations, to offer program origination or not, to move speedily or at the slowest pace permitted to develop access channel facilities and encourage their use—all can affect the audiences and earnings of co-located television stations. In the light of this fact, we remain persuaded that cable systems are more likely to grow, in size and service to their subscribers if they are not under common control with co-located television stations. We have not been shown that cable growth will be significantly retarded by the unavailability, under our rules, of financial investment by co-located stations.

43. We do not agree with the contention that new developments have washed away the case for cable-broadcast cross-ownership restrictions. Our adoption of the *Cable Television Report and Order* was designed to encourage the growth of cable; to the extent that our efforts in that regard are successful, the time available to us for early preventative action with respect to cross-control of cable and other media is foreshortened. The assurance we are offered that cable will ultimately become essentially a "common carrier" of mass communications may or may not be correct, but in either event fails to come to grip with the short run, during which origination cablecasting can be expected to play a significant role in attracting, and affecting, cable subscribers.

44. Our reasons for not exempting UHF television stations from the general applicability of Section 76.501 are well summarized in paragraph 16 supra, and do not require repetition here. Our reasons for not exempting educational television stations are essentially the same as those previously indicated by us in footnote 1 of the *Notice*

[11] By March 30, 1972, according to *Television Factbook* (1972-1973 ed., p. 75-a), broadcasters held ownership interests in some 37.9% of the 2,839 cable system operations.

of Proposed Rule Making and of Inquiry in Docket No. 18891 (35 Fed. Reg. 11042 July 9, 1970), released concurrently with the *Second Report;* the arguments in favor of exemption set forth in paragraph 17 supra do not extend significantly beyond those of which we were aware at the time of issuance of the *Second Report* and the *Notice . . . in Docket No. 18891;* and in certain particulars—notably NAEB's assertion that ETV cross-owners could coordinate the programming activities of the ETV station and the cable system so that imported signals would not have an adverse effect on the ETV station's offerings—are uncomfortable reminders of some of the disadvantages of cable cross-ownership with local commercial television.

45. The question of our jurisdiction to adopt rules concerning diversification of ownership of cable television systems is adequately treated in paragraph 17 of the *Second Report*, and requires no further elaboration at this juncture.

46. In the preceding paragraphs, we have (in response to a number of petitions for reconsideration in this matter) set forth our basic present position with respect to the cable cross-ownership provisions in Section 76.501 of our Rules.

47. Having done so, we must also express our recognition that a requirement of mandatory divestiture of existing such cross-ownerships is more severe in its impact on affected broadcasters—and hence requires greater justification—than a rule prohibiting only the subsequent creation of such cross-relationships. We are well aware of the Supreme Court's admonition, in *Timken Roller Bearing Co.* v. *U.S.*, 341 US 593, 603 (1951), that "divestiture . . . is not to be used . . . whe[re] other effective remedies, less harsh, are available."

48. Moreover, it must be conceded that in at least one respect, the need for a prohibition against cross-ownership et al. of co-located stations and systems—and for mandatory divestiture—has abated somewhat as a result of the Commission's recent adoption of Section 76.251 of the Rules (in the *Cable Television Report and Order in Docket No. 18397*, 36 FCC 2d 143, released February 3, 1972). That section provides that all cable television systems operating in major market areas—where approximately 70 percent of the American people reside—must, by March 31, 1977, maintain public-access, education-access, and local-government-access nonbroadcast channels, and promptly expand their facilities as needed to meet demand for leased-access nonbroadcast channels; and that "Each such system shall exercise no control over program content on any of th[ese] channels . . ." Although this recent development is not sufficient to alter our basic view regarding the provisions of Section 76.501, it does suggest that there may be several more station-system local-cross-ownership situations than we had previously anticipated in which the balance of relevant considerations now weighs in favor of a waiver of the mandatory-divestiture requirement.

49. In paragraph 13 of the *Second Report and Order in Docket No. 18397* (issued in July 1970), we stated that "we would consider waivers on an ad hoc basis where it is clearly established that a cross-ownership ban would not result in greater diversity, and in footnote 6 we added that "There may, for example, be some sparsely inhabited area where no one is willing to apply for an available broadcast chan-

nel except a local CATV operator interested in providing CATV-originated programming to a wider area."

50. It now appears to us that those statements may have actually had the effect of inhibiting, rather than encouraging, the submission of justifiable requests for waiver of the divestiture requirement: there may well be a number of other grounds and circumstances which, if properly argued and substantiated by petitioners, would result in the grant of specific waivers.

51. Accordingly, we invite the filing—within 120 days after the issuance of this memorandum opinion and order—of petitions for waiver of the mandatory-divestiture requirement (fully supported by pertinent facts, views, arguments, and data) from all cross owners et al. of co-located television stations and cable systems who believe that grandfathering would be appropriate in their case. Upon the receipt of a number of such petitions, they will be carefully reviewed by the Commission to enable us to pick out, on a rational and consistent basis, those situations in which the issuance of a waiver (or other appropriate relief) would both serve the underlying objectives of Section 76.501 and avoid unnecessary hardship. Where such a waiver is granted, the petitioner's interests in the affected station and cable television facility may not subsequently be transferred to a new joint holder without prior approval of the Commission, upon a showing by the petitioner that such transfer(s) would serve the public interest.

52. It would be premature for the Commission at this time to specify the grounds for waiver which it will find acceptable, or to list the evidence necessary to support such grounds. We will certainly be interested in such aspects as (1) the extent (if any) of financial loss the cross-owner would suffer as a result of mandatory divestiture; (2) the impact of the station-system cross-relationship upon economic competition and diversity of control of media of expression in the service areas of the stations and systems in question; and (3) the quality of service which the system has been providing (in terms of broadcast signal carriage, cablecast programming by the system and others, system technical quality and reliability, etc.), and the extent to which it has been enhanced, or impaired, by the cross-relationship. But this itemization is intended only to be suggestive, and the Commission does not at all assume that it exhausts the possibilities.

53. We recognize, of course, that this process will further extend the period of uncertainty which has existed during the two-year pendency of the petitions for reconsideration of the *Second Report and Order in Docket No. 18397*, and accordingly we have also decided to generally extend the grace period for divestiture of prohibited cross ownerships et al. until August 10, 1975.

Accordingly, IT IS ORDERED, That the petitions for reconsideration filed in response to the *Second Report and Order in Docket No. 18397* ARE DENIED in all respects except that indicated below.

In view of the foregoing, and pursuant to authority contained in Sections 4(i), 5, and 303(r) of the Communications Act of 1934, as amended, IT IS FURTHER ORDERED, That effective March 2,

1973, Section 76.501(b) of the Commission's Rules is amended to substitute "August 10, 1975", for "August 10, 1973".

IT IS FURTHER ORDERED, That the proceeding in Docket No. 18397 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING STATEMENT OF COMMISSIONER ROBERT E. LEE

I was a member of the Commission at the time of the adoption of the Second Report and Order, 23 FCC 2nd 816, and at such time voted against the adoption of such restrictions of cross-ownership which are now encompassed in Section 76.501, formerly Section 74.1131. Pursuant to such Order a number of such cross-ownership licensee's, in good faith, have complied with our divestiture rules—perhaps to their economic detriment.

We now have before us Petitions for Reconsideration of that Second Report and Order. As stated earlier, I prefer to grandfather all such cross-owned systems which were in being prior to June 24, 1970, the date of the Second Report and Order.

I am not persuaded to concur with the majority's decision which would treat this problem by entertaining requests for waiver from the affected parties.

DISSENTING STATEMENT OF COMMISSIONER NICHOLAS JOHNSON

I dissent from the majority's resolution of our reconsideration of § 76.501 for the sole reason that I can see no reason for encouraging currently cross-owned systems to file waiver requests. In view of the obvious diversity of views among my colleagues with respect to this reconsideration report, I wish to make it clear that I strongly favor our current rules prohibiting the cross-ownership of cable and broadcast interests in the same market, and I am opposed to any policy which would have the effect of grandfathering those cross-owned systems which have chosen to "gamble" on the outcome of the instant reconsideration proceeding.

Waivers of our cross-ownership rules should only be granted where—as in all other waiver request situations—the applicant carries its very heavy burden of proof. The majority's "liberal" waiver policy with respect to currently cross-owned systems appears to modify our traditional waiver approach and will, no doubt, result in the eventual Commission approval of numerous existing patterns of cross-ownership. In my view, such an approach does not encourage the diversity of media views which our cross-ownership rules are designed to engender.

Further, such an approach is decidedly unfair to those cable systems which, once apprised of our cross-ownership rules and our consequent divestiture requirements, sought to divest themselves of their offending interests within our three year deadline. Our current resolution of this reconsideration proceeding thus has the effect of actually penalizing those cable operators who chose to conform to our rules. I believe that such discriminatory treatment can only be viewed as a reward to those broadcasters and cable systems who preferred to forestall—rather than to capitulate to—the inevitable.

This infant industry is still young enough that mere reference to "grandfathers" is a little amusing. In fairness, I believe all participants should at least start at the same starting line. Why should some cable operators have a substantial competitive advantage over their competitors in this industry because the FCC, in its discretion, has accorded it to them? The "burdens" on the industry of equitably enforcing these standards across the board would be minimal in 1973.

I also dissent from the majority's decision to extend—for two more years—the time in which currently cross-owned systems may have for divestiture. Those systems which petitioned for reconsideration of our rules should not now be rewarded for delaying tactics. I would, therefore, require divestiture by August 10, 1973, as we initially provided when we adopted § 76.501.

CONCURRING STATEMENT OF COMMISSIONER CHARLOTTE T. REID

I was not a member of the Commission at the time of the adoption of the Second Report and Order, 23 FCC 2nd 816, but had I been, in all probability, I would have voted against the adoption of such restrictions of cross-ownership which are now encompassed in Section 76.501, formerly Section 74.1131. However, the majority did adopt the rule and a number of such cross-ownerships have complied with our divestiture rules.

We now have before us Petitions for Reconsideration of that Second Report and Order. While I would have preferred to grandfather all such cross-owned systems which were in being prior to June 24, 1970, the date of the Second Report and Order, I am persuaded to concur with the majority's decision since it is clearly evident that there is not a majority favoring grandfathering of such systems. I want to make it explicitly clear however, that I have joined in this action to retain our general cross-ownership rule with the majority's understanding that we will treat requests for waiver from the affected parties very liberally.

CONCURRING STATEMENT OF COMMISSIONER RICHARD E. WILEY

I concur in the Commission's action denying the petitions for reconsideration of our cross-ownership rules but holding out the possibility of waiver of our divestiture requirement upon a public interest showing. While I do not favor rescission of our rules at this time, I would have preferred a policy of grandfathering existing cable systems and co-located television stations for the reasons stated by many of the petitioning parties—not the least of which is that divestiture may be an unnecessarily harsh remedy. However, there were simply not four votes for my position. For example, my colleague Commissioner Hooks favored repeal of the rule, but would not support a policy of grandfathering. Accordingly, under the circumstances, I concur in the hope that a reasonable waiver policy will be implemented by the Commission.

DISSENTING STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS

As is apparent from the magnitude of attention given to this issue,[1] the Commission was here faced with what I consider a critical question concerning the structure of the broadcast/cable television industry in this country. That is, whether broadcasters are to be permitted to extend their local communications businesses and expertise into a media that just might supersede broadcasting—cable television.

Underlying the Commission's decision in this matter are, at least, three arguments which have some very real appeal: (1) the Commission's historical anti "duopoly" [2] sentiments; (2) a desire to leave, to the extent possible, the cable field open to new interests, and particularly minority groups which have heretofore been denied significant participation in the mass media; [3] and (3) strangulation of cable development.

While the Commission is to be commended for its sincere and laudable concern over the foregoing problems—and particularly its sensitivity to the minority situation which, needless to say, is a paramount concern of mine—I must record that I am not convinced that, in the long run, these rules are necessary or correct to achieve these desirable goals. I shall attempt to explain my personal reasoning.

Initially, the rules are simply a transposition of the philosophical principle of "duopoly" now applicable to broadcasting. The patent purpose of the "duopoly" policy is to ensure that no private interests monopolize the vital channels of communications in any given area; and conversely, to promote a multiplicity of news, public affairs and entertainment voices in the community. Insofar as the "duopoly" rules relate to broadcasting stations—and particularly those in the same service (e.g., TV service, AM and FM radio service)—the Commission's objectives can be reasonably supported and I do support them generally.

However, the "duopoly" concept, whatever its merits in the case of broadcast stations, could very well be superfluous where broadcast/cable cross-ownership is involved because of the differing characteristics of the two media. Firstly, cable systems developed and exist not to deliver the single signal of the operator, but to bring to the community distant signals theretofore unavailable, as well as the local signals. That is chiefly the nature of contemporary cable systems. Couple these additional broadcast signals with governmental, public access and perhaps a 50–60 channel capacity delivering everything from television to newspapers to general data and it is clear that the modalities of cable

[1] The specific issue is pregnant on reconsideration from the *Second Report and Order* (Docket No. 18397) and focuses on Section 76.501 (originally Section 74.1131) of our Rules, 47 C.F.R. Section 76.501. In essence, the rule prohibits a broadcaster or cable operator from owning both a cable system and a broadcast station in a geographic area where the predicted Grade B contour of that station and the cable system service area overlap.

[2] In short, the Commission's "duopoly" (and derivative multiple/cross-ownership rules) prohibit the same party from having two or more broadcast facilities which cover primarily the same audience. For the rules adverted to, and exceptions thereto, see Sections 73.35, 73.240 and 73.636 of Chapter 47 of the Code of Federal Regulations.

[3] This concern for minorities created somewhat through the efforts of groups like Black Effort for Soul in Television (BEST), is manifested in the cable franchise rules which seek to ensure due process in grants as well as our access channel rules.

itself preclude the sort of dominance misapprehended by the majority.[4]

Tangential to the apprehension of "duopoly" is the fear of impediments to the development of cable. However, short of a categorical ban on local broadcast/cable cross-ownership; the Commission could have prescribed rules which, for example, would have mandated channel availability on free or lease basis; or it could have placed reasonable limits on network or conglomerate ownership; or it could have established a cut-off limit with respect to the number of subscribers served by a single cable interest. These lesser strictures might have served the necessary purpose and if the experience later demanded more stringent measures such as prohibition and divestiture, they could have been imposed as the operative method of preventing problems which are now purely speculative. Prohibiting businessmen from engaging in a legitimate enterprise and divestiture of lawfully acquired property is a last-resort sort of remedy rather than a preventative engendered by cautious conjecture.[5]

In this connection, it seems to me that the Commission's prohibitions sustained herein are tantamount to some unthinkable federal order which would have decreed, at the turn of the century, that buggy makers could not enter the automobile business even though the technology of the latter business appeared to have the potential to eclipse the former, because of the fear that buggy manufacturers would impede automobile development out of an economic interest to preserve the buggy industry. Studebaker, for instance, never could have made a car had the government, out of an abundance of concerned caution, imposed such a ban. This is exactly how some believe that broadcasters would squash cable. It could be as was remarked by C. J. Darling: "Men would be great criminals did they need as many laws as they make." [6]

Another strong argument in favor of the rule as adopted—and one which I am acutely attuned to—comes from those who fear that allowing broadcasters to own cable systems will prevent minority interests from "getting a piece" of this burgeoning communications tool. Correctly believing that they were previously excluded (that is, effectively excluded) from equity in the broadcast industry, they see cable television as a panacea and the only means available to get a foothold in the mass media. Much as I, too, would like to believe in a panacea, and recognizing that minority cable ownership is desirable and possible, I trust that minorities will continue to plug for a foothold in this new media without abandoning collateral efforts for representation and ownership in conventional broadcasting. In the relatively short time I have been Commissioner, I have witnessed an increasing awareness on the part of broadcasters of problems relating to minority ownership, employment, and programming. The Commission is keeping them

[4] The so-called "Seiden Report" ("Mass Communications in the United States") cited in the majority opinion and by those opposing this rule is instructive on the issue of market dominance. The "Seiden Report" states that "there is a very large diversity of media available to the public, in virtually every market regardless of size" and that "co-located cable television cross-ownership could not and would not significantly affect it."

[5] While I recognize that the cross-ownership prohibition does not go so far as to prevent a broadcaster from going to a distant market and entering the cable business, very few independent broadcasters know enough or care enough about some city where they are not involved in the economic, political, and social affairs to so do. These are local businessmen who, like all of us, need a home base of operations.

[6] *Scintillae Juris* (1877).

aware and as far as I am concerned this agency has just begun to fight. Moreover, I have been encouraged and, frankly, delighted at the increasing number of acquisitions of broadcast properties by minority groups in recent months [7] and I am given to understand that many more are in the works. Concomitantly, I believe that just as minorities are advancing—albeit, too tardily—in the broadcast field, they will obtain ownership interests and meaningful managerial positions in the cable industry. I further believe that minorities have a misplaced fear about their inability to compete with broadcast interests for cable franchises. Competent minority entrepreneurs are now competing against local monied interests, large cable operators, and broadcasters willing to enter the cable field in cities remote from their stations and, in many cases, coalescing with these groups to form new, integrated firms. The economic dynamics of the market will determine the shape of cable development. We have and are witnessing the formation of giant cable television firms because of economic incentives and necessity; the "mom and pop" systems we once dealt with are mainly destined for extinction. Big broadcast interests, if allowed to fairly compete, could have balanced the potential dominance of several large (and still growing) system operators.

In that connection, and despite their inexcusable failure to include minorities in meaningful roles (which failure I have increasingly railed against), I think that large broadcasters have demonstrated a great deal of public responsibility and attentativeness to the business of communications across the years. Had they been permitted to compete equally for cable we might have had a faster growth of the cable industry. The fact that many non-broadcast groups have gotten cable TV systems in many areas of the country would have, in itself, provided a competitive spur. And, neither the public nor the Commission would have allowed a broadcast/cable operator in city "A" to do less with its franchise than a non-broadcast cable interest in city "B". Marketplace competition, local governments, public interest groups, and the prodding of the Commission would have dictated rapid cable television development in the public interest, convenience and necessity. Minority groups, using their leverage and influence with all competitors stand a better chance of securing their goals.

Finally, we come to the matter of grandfathering. It seems to me that once having proscribed broadcast/cable cross-ownership in the same community, and caused already large scale divestiture thereby (e.g., Time-Life, Triangle), it would be inequitable to allow those who held on simply because they felt or took the chance that they might later be favored to have an edge on those who, in good faith, divested. In short, I am against grandfathering of present cross-ownership holdings even though I would not have originally voted for the ban on cross-ownership. If the reason for the rule is as good as the majority thinks—and I believe history will record that it is not—then it should be applied as if we fully believe in underlying policies. Let us not riddle the rule with automatic "grandfathering" which, naturally, is a clear admission that the policy reasons for the

[7] See an excellent chronicle of this phenomenon in West, *A Question of Control, Ownership and Role*, The Washington Post (Washington, D.C.) January 29, 1973 at B1, col. 1.

ban are somehow not very important or only important in some cities. That is not to say that in a compelling situation where the ultimate public interest would be manifest by selective "grandfathering" I would not favor such action. I would, however, not invite waivers or be loose in granting them.

In conclusion, I would like to repeat some recent remarks of Chairman Dean Burch [8] which, although discussed in a different context, are just as pertinent to the issue here involved. Mr. Burch observed that "the Commission would always do well to be sure of what it's doing before it does anything at all" and that "if it's a head cold you want to cure, don't tinker around with experimental brain transplants." There is also some sage language about the government's proper role in regulating "other people's business[es]" that merits consideration.

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[8] Address by Dean Burch, Chairman, Federal Communications Commission before the Hollywood Radio and Television Society (Los Angeles, California, January 11, 1973).

F.C.C. 73R-67

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CALIFORNIA STEREO, INC., SACRAMENTO, CALIF.	Docket No. 19515 File No. BPH-7668
INTERCAST, INC., SACRAMENTO, CALIF.	Docket No. 19516 File No. BPH-7669
EDWARD ROYCE STOLZ II, TRADING AS ROYCE INTERNATIONAL BROADCASTING, SACRAMENTO, CALIF.	Docket No. 19611 File No. BPH-7924
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 9, 1973)

BY THE REVIEW BOARD.

1. Before the Review Board is a petition to enlarge issues, filed July 5, 1972, by Intercast, Inc. (Intercast) requesting the addition of financial qualifications, studio adequacy, and misrepresentation issues against California Stereo, Inc. (California Stereo).[1]

FINANCIAL QUALIFICATIONS ISSUES

2. Intercast argues that financial issues are warranted to explore California Stereo's costs and to determine whether it will have available sufficient funds to meet its construction and first year operating costs.[2] According to petitioner, an amendment to California Stereo's application, filed March 9, 1972, provides $54,760.00 for "other operating costs, salaries, expenses, etc.," out of its total proposed costs of $87,594.10. Three of California Stereo's proposed staff of nine, Inter-

[1] Also before the Review Board are the following related pleadings: (a) Broadcast Bureau's opposition, filed July 19, 1972; (b) supplement to petition to enlarge issues, filed July 31, 1972, by Intercast; (c) erratum to (b), filed August 1, 1972, by Intercast; (d) Broadcast Bureau's comments to (b), filed August 11, 1972; (e) opposition, filed August 28, 1972, by California Stereo; (f) reply, filed September 8, 1972, by Intercast; (8) petition for leave to file a late pleading, filed September 11, 1972, by Intercast; (g) supplement to (f), filed September 11, 1972, by Intercast; and (h) supplement to (e), filed September 11, 1972, by California Stereo. Two matters warrant comment. First, in our Public Notice on the *Filing of Supplemental Pleadings Before the Review Board*, No. 90836, released October 11, 1972, we expressed our concern with the delays caused by the filing of supplemental pleadings. See also *Salem Broadcasting Co., Inc.*, — FCC 2d — 25 RR 2d 955 (1972); *Southern Broadcasting Company (WGHP-TV)*, FCC 73R-17, released January 12, 1973. In this case, Intercast supplemented its petition, which resulted in the Bureau and California Stereo filing supplements to their responsive pleadings, thereby delaying our consideration of this matter. In addition, petitioner supplemented its reply pleading. We look with disfavor on these practices, noting that the delay they cause is of the parties' own making. See *Southern, supra*. Second, Intercast's unopposed petition for leave to file late pleading will be granted. It appears that Intercast was confused over the time limit available to it to file a reply pleading and the pleading is only one day late.

[2] The two issues seek to determine:

1. Whether the budget submitted by California Stereo, Inc. is adequate to cover first year construction and operating costs.
2. Whether California Stereo, Inc. has sufficient funds to meet a budget encompassing realistic construction and first year operating costs.

cast continues, are covered by California Stereo's executive personnel "Pledge Agreement" and its "Plan of Finance" which provides a total of $27,000.00 for the three executive employees, thereby leaving a total of $27,760.80 to cover the salaries of the other six staff members. This averages out to salaries of $4,626.00 per employee per year, or approximately $89.00 per week, which, Intercast argues, is inadequate to hire such personnel as chief engineer and disc jockeys in a market the size of Sacramento, California. Moreover, Intercast continues, out of this same $27,760.80, California Stereo has budgeted for such operating expenses as telephone, utilities, line charges, office supplies, promotion, travel, tapes, and UPI or AP wire service charges. Furthermore, since California Stereo has not adequately provided for studio space (see paragraph 6, *infra*), Intercast asserts, the $1,800.00 it has budgeted for its studio is inadequate.

3. The Broadcast Bureau opposes the request, arguing that Intercast failed to submit affidavits from individuals with personal knowledge of California Stereo's financial proposal as required by Commission Rule 1.229(c). In its opposition, California Stereo argues that it has adequately provided funds to cover staff salaries. By presenting a breakdown of its proposed operating costs of approximately $74,100, which covers all the expenses enumerated in Intercast's petition including $39,000 for salaries, California Stereo asserts that it has proposed sufficient funds to cover all its necessary first year expenses. California Stereo further asserts that it will have a cushion of nearly $4,000.00 ($95,250.00 funds available less $91,500.00 expenses) to cover any additional expenses.

4. In reply, Intercast asserts that California Stereo's clarification of its pre-operating and operating costs only substantiates Intercast's claims that California Stereo's proposed operating expenses are unrealistic. The proposal of $39,000 for salaries less the $27,000 proposed executive salaries would leave only $12,000 for the remaining six employees or $2,000.00 per employee per year, Intercast argues. Intercast further maintains that "the funds which it [California Stereo] is relying upon to establish its financial qualifications are inadequate"; therefore, a financial issue to explore California Stereo's funds available is warranted.

5. Petitioner's request for financial issues against California Stereo will be denied. Generally, the Board will not add a cost estimates issue unless the applicant's estimates are unreasonable on their face,[3] or challenged by specific facts based on affidavits from persons with personal knowledge of the facts.[4] In the Board's opinion, California Stereo's salary estimate of $39,000.00 for nine staff members is not unreasonable on its face and Intercast's assertion to the contrary is based on mere speculation and surmise.[5] Thus, petitioner has not established by affidavits from persons familiar with the prevailing rates of compensation in the Sacramento area or by other means that California Stereo could not hire its proposed staff for $39,000.00.

[3] See *Viking Television, Inc.*, 17 FCC 2d 823, 16 RR 2d 123 (1969); *Eastern Oklahoma Television Co., Inc.*, 28 FCC 2d 31, 21 RR 2d 494 (1971).
[4] See *Snake River Valley Television Inc.*, 16 FCC 2d 613, 15 RR 2d 775 (1969); *Community Broadcasting Company of Martsville*, 16 FCC 2d 647, 15 RR 2d 814 (1969).
[5] See *Folkways Broadcasting Company Inc.*, 33 FCC 2d 806, 23 RR 2d 992 (1972); *Martin Lake Broadcasting Company*, 23 FCC 2d 721, 19 RR 2d 277 (1970).

Finally, Intercast has not adequately supported its request for an availability of funds issue. Like the cost estimates issue, this, too, is based merely on speculation and surmise.

STUDIO ADEQUACY ISSUE

6. Next, Intercast argues that California Stereo's proposed studio is too small to accommodate an FM radio station. According to Intercast, the 260 square feet of space, or a room 16 by 16 feet, proposed by the applicant [6] will have to be partitioned to provide a programing booth, space for telephone, typewriters, UPI or AP wire service machines, desks for employees, places to store office supplies, station records and program materials, and places for technical equipment such as turntables as well as space for participants in public service programs. In Intercast's view, such a proposal is inadequate. Both the Bureau and California Stereo oppose the request. California Stereo argues that the Commission's only criterion for studio proposals is that the "proposal be reasonable for the intended operation". Respondent claims that its proposed studio is adequate for an FM station. California Stereo attaches to its opposition pleading architectural drawings showing the proposed studio configuration as a series of three rooms in a space 8 feet wide and 32 feet long.[7]

7. In our opinion, California Stereo's studio proposal is not unreasonable on its face, and petitioner has failed to raise any serious questions that have not been satisfactorily explained by the applicant. With the aid of Waterman's affidavit (see note 7, *supra*), Intercast argues that inadequate working and equipment space has been provided. However, its generalized assertions are inadequately supported and do not raise the serious questions which would warrant addition of the issue requested.[8] The question is whether the applicant has presented a studio proposal which is reasonably capable of effectuation. See *Birney Imes, Jr.*, (*WMOX*), 27 FCC 225, 17 RR 419 (1959). In our view, California Stereo has done so.

MISREPRESENTATION ISSUE

8. Finally, petitioner contends that California Stereo misrepresented its survey of community needs and interests. Intercast states that California Stereo's amended application claims that 122 community leaders were interviewed; however, upon contacting several of these persons, Intercast avers that it discovered that some were never interviewed and that others, who state they were contacted, were interviewed by telephone and for only a very short period of time. To

[6] Intercast derives its 260 square foot figure by relying upon a letter which was submitted with California Stereo's application from the managers of Plaza Towers where California Stereo proposes to locate its studio. According to the letter, rent starts at 57½ cents per square foot per month. Utilizing the starting rate per square foot and California Stereo's budgeted $150.00 per month for its studio, Intercast determined the studio space would be 260 square feet.

[7] In its reply pleading, Intercast submits an affidavit from Logan Waterman, Jr., holder of a "First Class Radio Telephone Operator Permit", who, after studying the architectural sketches submitted in California Stereo's opposition pleading, avers that, based on his 25 years broadcast experience, California Stereo's proposed studio space is inadequate for a new FM station in Sacramento.

[8] *Cf. WVOC, Inc.*, 32 FCC 2d 765, 23 RR 2d 871 (1971).

support its factual allegations, Intercast attaches to its petition nine unsworn statements—four from individuals allegedly interviewed by California Stereo and five contacted by principals of Intercast. In a supplement to its petition, Intercast provides the affidavits of twelve persons (the original nine and an additional three) who were allegedly contacted by California Stereo. In petitioner's opinion, an issue is warranted to determine whether the interviewees were contacted and whether California Stereo attempted to mislead the Commission by not advising it that such interviews were conducted by telephone and that they were of short duration. The Broadcast Bureau states that, absent a satisfactory explanation by California Stereo, it supports addition of an issue to determine whether California Stereo conducted its survey of community needs as represented.[9] In opposition, California Stereo asserts that nothing in the *Primer*[10] requires that interviews be conducted face-to-face or for some minimum period of time or that advance notice be given to prospective interviewees. California Stereo submits with its opposition pleading an affidavit of Paul E. Anderson, president of California Stereo, who states that he interviewed each of the community leaders Intercast alleges were not contacted or contacted only by telephone. The affidavit specifies the date and time of each alleged interview.

9. In the Board's opinion, Intercast has raised serious questions concerning certain aspects of California Stereo's community survey. These questions merit an evidentiary inquiry at the hearing. In the affidavits submitted by the petitioner, one community leader claims he was "never contacted" by California Stereo, two claim they were "not approached by anyone representing California Stereo", and three aver that they were "not contacted" by any one who claimed to be conducting a survey of community needs. Therefore, at least six community leaders allegedly surveyed by California Stereo claim never to have been interviewed. California Stereo's submission of an affidavit from Anderson detailing alleged survey interviews he had with these six persons does not adequately answer their flat assertions of never having been interviewed.[11] Furthermore, California Stereo's argument that persons are likely to forget interviews conducted several months previously is not persuasive; here, not one, but six persons claim that they were not contacted by the applicant, and the interviews allegedly took place only about three months before the affidavits were executed. In these circumstances, an appropriate issue is warranted. Compare *James J. B. Scanlon (KCAT)*, FCC 70–1218, released November 18, 1970, 35 FR 17968. However, there is no merit to Intercast's other allegations concerning California Stereo's survey. There is nothing in the *Primer*, *supra*, which precludes an applicant from contacting community leaders over the telephone nor does the *Primer* prescribe the duration of each interview; therefore, the fact that California Stereo

[9] However, the Bureau opposes the addition of an issue to determine whether California Stereo attempted to mislead the Commission by not advising it that its interviews with community leaders were conducted by telephone.

[10] *Primer on Ascertainment of Community Problems By Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971).

[11] The Board has in the past added appropriate issues where conflicting affidavits were presented by opposing parties. See, *e.g.*, *Folkways Broadcasting Company, Inc.*, 27 FCC 2d 619, 21 RR 2d 163 (1971); *Christian Voice of Central Ohio*, 26 FCC 2d 76, 20 RR 2d 389 (1970).

did not indicate to the Commission that some of its interviews were conducted by telephone or the duration of each interview does not warrant an evidentiary inquiry. See *Primer*, *supra*, 27 FCC 2d at 663, 21 RR 2d at 1522.

10. Accordingly, IT IS ORDERED, That petition for leave to file a late pleading, filed September 11, 1972, by Intercast, Inc., IS GRANTED and the late filed pleading IS ACCEPTED: and

11. IT IS FURTHER ORDERED, That the petition to enlarge issues, filed July 5, 1972, by Intercast, Inc., IS GRANTED to the extent indicated herein, and is DENIED in all other respects; and

12. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED as follows:

To determine whether California Stereo, Inc. misrepresented facts to the Commission in connection with its survey of community leaders, and if so, to determine the effect of this conduct on the qualifications of California Stereo, Inc. to be a Commission licensee.

13. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the issue added herein SHALL BE on Intercast, Inc., and the burden of proof SHALL BE on California Stereo, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

109-027—73——3

F.C.C. 73R-65

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM (WNYC)	Docket No. 11227
For Special Service Authorization To Operate Additional Hours From 6 a.m. (EST) to Sunrise, New York, N.Y., and From Sunset, Minneapolis, Minn., to 10 p.m. (EST)	File No. BSSA-266
CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM (WNYC), NEW YORK, N.Y.	Docket No. 17588 File No. BP-16148
MIDWEST RADIO-TELEVISION, INC. (WCCO), MINNEAPOLIS, MINN.	Docket No. 19403 File No. BP-19151
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 5, 1973; Released February 8, 1973)

BY THE REVIEW BOARD: BOARD MEMBER NELSON NOT PARTICIPATING.

1. City of New York Municipal Broadcasting System (WNYC) requests the specification of an "appropriate issue . . . to assure compliance with the National Environmental Policy Act of 1969 (N.E.P.A.)"[1] In the Board's judgment, the action taken by the Commission in issuing a Notice of Proposed Rule Making (*In the Matter of Implementation of the Environmental Policy Act of 1969*, 36 FCC 2d 108) to implement the provisions of the N.E.P.A. indicates that the addition of *ad hoc* issues would not be appropriate. Petitioner has cited no facts from which it might be inferred that either of the proposals could significantly affect the quality of the human environment. However, our denial of the instant petition is without prejudice to the subsequent filing of an appropriate petition should the Commission adopt rules indicating the need for enlargement of the issues while this case is still in adjudication.

2. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed by City of New York Municipal Broadcasting System, on November 10, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[1] The N.E.P.A. is found at 42 U.S.C. Sections 4321 *et seq.* WNYC's petition was filed on November 10, 1972; the Broadcast Bureau's opposition was filed on November 22, 1972; on November 24, 1972, Midwest Radio-Television, Inc., filed its opposition; and WNYC filed a reply on December 4, 1972.

F.C.C. 73R-72

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of COLORADO WEST BROADCASTING, INC., GLENWOOD SPRINGS, COLO.	Docket No. 19588 File No. BPH-7646
GLENWOOD BROADCASTING, INC., GLENWOOD SPRINGS, COLO.	Docket No. 19589 File No. BPH-7707
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 9, 1973)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER DISSENTING WITH RESPECT TO THE ADDITION OF THE SECTION 1.514(a).

1. The above-captioned, mutually exclusive applications for a new FM broadcast station, utilizing 92.7 MHz ch 224, at Glenwood Springs, Colorado, were designated for hearing on a standard comparative issue by Commission Order, FCC 72-836, released September 22, 1972, 37 FR 20276, published September 28, 1972. The Review Board now has before it Glenwood Broadcasting, Inc.'s (Glenwood) petition to enlarge issues, filed October 13, 1972, seeking addition of the following issues:[1]

a. To determine with respect to the application of Colorado West Broadcast, Inc. (hereinafter "Colorado West"), whether the staff proposed is adequate to effectuate its proposals.

b. To determine with respect to the application of Colorado West whether the proposed antenna and transmitter site is suitable for the proposed operation.

c. To determine with respect to the applicant's 45% stockholder, Mr. William R. Dunaway, whether Colorado West has submitted complete and accurate information in its application and has continued to keep the Commission advised of substantial and significant changes, as required by Section 1.65 of the Commission's Rules.

d. To determine with respect to the application of Colorado West

(1) The basis of the applicant's estimated costs of construction and operating expenses for the first year of operation.

(2) In light of the evidence adduced pursuant to Issues a, c, and d(1) above, whether the applicant is financially qualified.

e. To determine, on the basis of the foregoing, whether Colorado West possesses the requite qualifications to be a broadcast licensee.

2. *Adequacy of Staff Issue.* Glenwood notes that Colorado West proposes to broadcast 130 hours each week, of which 16.5% will be non-

[1] The Board also has before it an opposition to the petition to enlarge issues, filed November 3, 1972 by Colorado West Broadcasting, Inc.; comments filed by the Broadcast Bureau, November 3, 1972; a reply to the opposition, filed by Glenwood on November 13, 1972; and comments on reply to opposition, filed by Colorado West on January 4, 1973. In its reply Glenwood for the first time makes allegations of what it describes as a further violation of Section 1.65 of the Commission's Rules. Such new allegations are precluded by Section 1.45(b) of the Commission's Rules and will therefore not be considered. The comments on reply filed by Colorado West will be dismissed since such comments are not authorized by Section 1.45(c) of the Commission's Rules.

entertainment programming, and that Colorado West has only proposed three full-time employees and two part-time employees to operate its station. Furthermore, Glenwood notes that Colorado West has not proposed to include equipment for automated programming. Glenwood contends that it will be impossible for Colorado West to operate its proposed station with such a limited staff. In support of this contention, petitioner argues that three full-time employees will be required for announcing duties alone and that since Colorado West has not supplied work schedules or other information, it must be assumed that the two part-time employees will not be able to accomplish all of the other tasks which are necessary to successfully operate the station. Furthermore, Glenwood notes that Station KSNO, Aspen, Colorado, a daytime only station in which Mr. Dunaway, a 45% stockholder of Colorado West, is a 50% stockholder, has utilized four full-time employees, four part-time employees and relied upon the staff of the local newspaper for local news. In further support, Glenwood attaches an affidavit of the manager of its AM station to the effect that it takes a newsman two hours to produce a 15 minute college program.

3. The requested issue will be denied. The unsupported assertions of the petitioner do not comply with the specificity requirements of Section 1.229(c) of the Rules. Moreover, in its oppositions, Colorado West sets forth its proposed work schedules which, in view of its President's extensive participation, do not appear to be inherently unreasonable. See *Jay Sadow*, 27 FCC 2d 248, 20 RR 2d 1171 (1971), and cases cited therein.

4. *Site Suitability Issue.* In support of this issue, Glenwood points out that Colorado West's proposed transmitter and antenna site is adjacent to an abandoned ski lift and must be reached via a winding road in excess of one mile in length which will be unusable during winter because of the heavy snowfall. This allegation is supported by an unverified letter from the Mayor of Glenwood Springs advising the Commission that the access road is not kept open in winter and barely maintained in summer. In opposition, Colorado West avers that it has a number of different vehicles available to it which will make access to its site in all kinds of weather possible. The requested issue will be denied. The foregoing allegations do not raise sufficient questions as to the accessibility of Colorado West's proposed transmitter and antenna site to warrant an issue in this proceeding. See *Charles Vanda*, FCC 65R–65, 4 RR 2d 543, released February 18, 1965.

5. *Section 1.65 Issue.*[2] Glenwood bases its request for this issue upon the following facts which are not challenged by Colorado West. Colorado West proposes to rely upon William R. Dunaway for a substantial part of its financing. Dunaway's balance sheet, submitted with the Colorado West application, show assets exceeding $605,500.00, current liabilities of $20,000.00 and long term liabilities of $65,000.00. This representation, Glenwood contends, fails to show all of Dunaway's liabilities. Petitioner notes that Mountain States Communications, Inc. (Mountain States), of which Dunaway is president and 94.12% stockholder, tendered for filing, an application for a new standard broadcast

[2] While Glenwood requests a Rule 1.65 issue, the facts alleged concern a possible Rule 1.514 violation.

station at Steamboat Springs, Colorado, on December 12, 1969. That application has not been accepted for filing because of the AM freeze. Nevertheless, that applicant purports to rely on a $75,000 loan from William Dunaway. Thus, Glenwood contends, Dunaway's failure to show his obligation to lend $75,000 to Mountain States as a liability on the balance sheet tendered with the Colorado West application requires the inclusion of an issue in this proceeding. Moreover, it is conceded by Colorado West that on February 18, 1972, it filed an application for a new FM station at Steamboat Springs, and that the applicant in that case also proposed to rely upon Dunaway for a substantial part of its financing. The balance sheet submitted with that application did not show Dunaway's obligation to lend Mountain States $75,000 for its AM application. By letter of May 10, 1972, the Commission notified Colorado West that its application for Glenwood Springs should be amended to show Dunaway's and Curtis' obligations to finance the Steamboat Springs FM application. An amendment was filed reflecting Dunaway's and Curtis' obligation for the Steamboat Springs FM station but the Steamboat Springs AM obligation was not included. Glenwood also contends that since the application was filed, negotiable securities listed as current assets by Dunaway have substantially decreased in value and that failure to report this change is a violation of Section 1.65. In these circumstances, Glenwood contends, an issue against Colorado West is imperative.

6. The Review Board agrees with the Broadcast Bureau that a disqualification issue is not warranted in the circumstance of this case, but that Colorado West's failure to disclose Dunaway's obligation to finance the Steamboat Springs AM station should be considered in the comparative evaluation of the instant application. It is apparent from Dunaway's balance sheet that his liquid assets substantially exceed his current liabilities, including his $75,000 contingent loan obligation to Mountain States. In these circumstances we see no motive for the applicant to mislead the Commission. In its opposition Colorado West states by way of explanation for its failure to fully advise the Commission of Dunaway's obligation, that Dunaway was not fully familiar with Commission requirements and that because of personal problems of counsel for Colorado West, the necessity to include the $75,000 obligation in the Colorado West application was overlooked by the law firm handling the matter. Neither ignorance of Commission requirements nor failure by a lawyer to properly advise his client justifies failure to fully and fairly disclose all pertinent facts to the Commission. However, in this case, it does not appear that there was intent to mislead the Commission. Nor is the relatively modest fluctuation in value of stocks held by Dunaway required to be reported by Section 1.65 of the Commission's Rules.[3] Thus, an issue to determine the effect on Colorado West's comparative qualifications of its failure to disclose all of Dunaway's obligations will be included in this proceeding.[4]

7. *Estimated Construction and Operating Costs.* Glenwood questions the validity of Colorado West's projected construction and first year operating expenses. Particularly, Glenwood questions the adequacy of the $14,000 budgeted by Colorado West to meet pre-opera-

[3] *Mace Broadcasting Co.*, 25 FCC 2d 621 (1970).
[4] *Great Southern Broadcasting Co.*, 18 FCC 2d 599, 16 RR 2d 864 (1969).

tional expenses, including the expenses of the hearing. Furthermore, Glenwood contends that the $19,000 projected by Colorado West for salaries will be not sufficient to pay the five persons it proposes to employ. These contentions are not supported by affidavits of persons with knowledge of the facts or other evidence that Colorado West's proposals are not adequate. In these circumstances, the issue will not be added.[5]

8. IT IS ORDERED, That the petition to enlarge issues, filed October 13, 1972 by Glenwood Broadcasting, Inc. IS GRANTED to the extent indicated herein, and IS DENIED in all other respects; and

9. IT IS FURTHER ORDERED, That the issues in this proceeding are enlarged as follows:

To determine whether Colorado West Broadcasting, Inc. has failed to report requisite information in its application as required by Section 1.514(a) of the Commission's Rules; and, if so, to determine the effect thereof on its comparative qualification to be a Commission licensee.

10. IT IS FURTHER ORDERED, That the comments on reply to opposition, filed January 4, 1973, by Colorado West Broadcasting, Inc. ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[5] *United Television Co., Inc.*, 26 FCC 2d 1006, 1009 (1970).

F.C.C. 73-71

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Proposals by COLUMBIA PICTURES INDUSTRIES, INC. For Operational Fixed Station Facilities in the Business Radio Service	Files Nos. 18006-IB-22X, 26398-IB-52X, 26399-IB-52X, 26858/26859-IB-52X, 26400-IB-52X

JANUARY 17, 1973.

COLUMBIA PICTURES INDUSTRIES, INC.,
711 Fifth Avenue, New York, N.Y.

GENTLEMEN: We have before us for consideration the proposals of Columbia Pictures Industries, Inc., for operational fixed station facilities in the Business Radio Service. The systems requested would operate at Atlanta, Georgia (File No. 18006-IB-22X); Boston, Massachusetts (File No. 26398-IB-52X); Dallas, Texas (File No. 26399-IB-52X); Las Vegas, Nevada (File Nos. 26858/26859-IB-52X); and at New Orleans, Louisiana (File No. 26400-IB-52X).

With regard to the Atlanta application (File No. 18006-IB-22X), it is hereby dismissed as you requested in your letter of November 22, 1972.

As to the remaining applications, your proposal calls for 125 MHz of contiguous spectrum space. This requirement is, in part, dictated by the type of equipment you propose to use, but, further, by the type of communication services you plan to provide. In the latter connection, you propose to have available a five-channel video capacity. The primary use of these channels would be for the transmission of feature motion picture films for viewing, at rates established by you, by guests in "hotels" subscribing to your service. Two channels (the "Tele/Theatre" channels) would be dedicated to this undertaking. The third channel (the "Trailer" or "Promotional" channel) would be used to advise "hotel" guests of the movies available for their viewing and the starting times of each feature. The fourth channel (the "Tele/Ad" channel) would be employed to inform guests of subscribing "hotels" about things they could see and do in the city in which the system is located. While no charge to guests would be made for this service, advertising messages would be carried and a charge would be made to third-party advertisers for this service. Lastly, the fifth channel (the "Televention" channel) would be used for closed circuit network telecasting of conventions and meetings at participating hotels. While this service is also free to guests staying at the participating hotels, there would be a charge made by Columbia for the use of its facilities. This would be paid by the third-party "convention" or third-party sponsors

whose "messages" were carried under contractual arrangements with an operating subsidiary of your company.

Based on the showing you have made, we believe a partial grant of your applications can be made.[1] Accordingly, your applications will be granted to the extent they contemplate the use of the authorized facilities for the presentation of feature films (i.e., the proposed two Tele/Theatre channels). We also grant your applications to the further extent to permit the use of the authorized facilities to present a third channel for advising "hotel" guests of the movies available for them to watch and their starting times (i.e., the "Trailer" or "Promotional" channel).

We are not disposed, though, to permit the use of Business Radio facilities to carry messages of third-party advertisers (the Tele/Ad channel) or for "convention" coverage (the Televention channel). While we recognize these services were to be subordinate features of your proposed operation, and although they might be useful to the public, they represent a use of private microwave facilities in the Business Radio Service which we think is inconsistent with the purposes for which the Service was established.

In partially granting your applications, we wish to make clear such partial grants are subject to the outcome of the Notice of Inquiry and Notice of Proposed Rule Making we are today announcing, and to the further conditions as hereinafter set out.

These are the major points we feel we should touch on in passing on your applications. There are a number of technical matters to be worked out; but this can be done best at staff level. For this purpose, we are delegating to the Chief, Safety and Special Radio Services Bureau, the authority necessary to resolve these matters and, following such action, to issue the required authorizations for your operational fixed station facilities.

Accordingly, consistent with the views we have expressed above, the applications of Columbia Pictures Industries, Inc., for operational fixed stations at Boston, Massachusetts (File No. 26398–IB–52X); Dallas, Texas (File No. 26399–IB–52X); Las Vegas, Nevada (File Nos. 26858/26859–IB–52X); and New Orleans, Louisiana (File No. 26400–IB–52X) are granted, subject to the following terms and conditions:

(1) That the grant of the above-referenced applications, or any proposals of the same class which may be subsequently filed by Columbia Pictures Industries, Inc., shall be subject to such determinations as may be made by the Commission in its inquiry and rule-making proceeding in Docket No. 19671.

(2) That pending decision in Docket No. 19671, Columbia Pictures Industries, Inc., shall utilize its authorized microwave facilities:

(a) Only to transmit feature films; and, without charge to any party, program material which may be of general interest to visitors in the areas in which its systems operate; and, also without charge to any party, pro-

[1] A number of questions are raised by your proposed operation. You have asserted eligibility in the Business Radio Service; and although the regulations governing eligibility are very broad (see Sections 91.551 and 91.552 of our Rules), we have some doubt whether the Business Radio Service should continue to be used for the type of service you propose. We also note the substantial spectrum space for which your applications call, and the possible impact of the assignment of such substantial spectrum space on the availability of frequencies in this range to other eligibles entitled to use them. While these questions do not require denial of your applications, we are instituting on this date a Notice of Inquiry and Notice of Proposed Rule Making in Docket 19671, covering in part the aforementioned issues.

gram material reasonably related to the subject business undertaking of the licensee, such as "trailers," previews of feature motion pictures, and scheduling information.

(b) Only to transmit the foregoing program material to "guests" in "hotels" served by the licensee.

(3) That, in any one area, the licensee, Columbia Pictures Industries, Inc., shall be granted no more than three video channels for the transmission of its program material and entertainment features, i.e., two channels for feature motion picture films and a third channel for promotional and related purposes, as defined above.

(4) That the facilities authorized to Columbia Pictures Industries, Inc., are not employed to carry advertising messages of third parties; or for providing "convention" coverage; or for the transmission of any messages, programs, or presentations of any kind for any third party for any consideration whatsoever, except as provided above.

(5) That any technical matters with respect to any applications of Columbia Pictures Industries, Inc., for facilities of the class described, above, are resolved satisfactorily by the staff acting in accordance with the delegation hereinafter made.

In connection with the pending applications of Columbia Pictures Industries, Inc., the Chief, Safety and Special Radio Services Bureau, is hereby delegated authority to issue licenses for the facilities requested by the applicant, in accordance with the foregoing terms and conditions, upon a satisfactory showing by the applicant that its proposals meet engineering and technical requirements of the rules governing the authorization and use of operational fixed stations in the Safety and Special Radio Services.

Further, the Chief, Safety and Special Radio Services Bureau, may authorize the use of transmitting equipment for use in the systems proposed here, where such equipment meets the technical standards set forth in Part 91 of the Rules; and further, may act on such additional applications as may be submitted by Columbia Pictures Industries, Inc., for similar facilities in the Business Radio Service, where any such requested authorization issued is, in substance, made subject to the foregoing terms and conditions.

Should the foregoing actions not be acceptable to you, that fact should be made known to the Commission, together with a full statement of reasons for finding them unacceptable. Such notice shall be given not later than thirty days following the issuance of any license to you for the facilities you have applied for.

Commissioners Johnson, Reid and Wiley concurring in the result.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-143

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of EASTERN MICROWAVE, INC. For Construction Permits in the Domestic Public Point-to-Point Microwave Radio Service for a New Station at Spafford Hill, New York and for Modification of Stations KEM36 and KEM59 at Hatch Hill and Sentinel Heights, N.Y.	File Nos. 3746-C1-P-67, 3597 and 3598-C1-P-68

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 9, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. The Commission has before it the above captioned applications of Eastern Microwave, Inc. (Eastern) which were filed on March 20, 1967, and January 16, 1968. A Petition to Deny was filed on February 28, 1968 by Channel 9 Syracuse, Inc. (Channel 9), licensee of WNYS-TV, Syracuse, New York. Responsive pleadings were subsequently filed by applicant and petitioner.

2. Eastern proposes to modify stations KEM36 and KEM59 and construct a new station at Spafford Hill, New York, for the purpose of relaying the signal of CKWS-TV (Kingston, Ontario) to Auburn Cablevision Corporation, Auburn, New York. Pursuant to Section 76.65 of our Rules, no Certificate of Compliance is required for Auburn Cablevision to carry this signal.[1]

3. In its petition to deny, Channel 9 contends that a grant of these applications would not serve the public interest because: (a) cable television would have an adverse competitive impact on local broadcasting; and (b) the Commission has not resolved in the "Syracuse Television Top 100 Market Study" [2] the effects of the concentration of control of the S. I. Newhouse family over mass communications in the Syracuse area (Auburn is some 22 miles west of Syracuse). Eastern answered that the Commission settled all public interest questions by granting its earlier applications to serve Auburn, New York, in *Unicable, Incorporated, et al.*, 6 FCC 2d 771 (1967). Eastern further argues

[1] In *Unicable Incorporated, et al.*, 6 FCC 2d 772 (1967) we waived Section 74.1107 of the rules to allow General Electric Cablevision Corp., Auburn, N.Y., to carry the CKWS-TV signal. Auburn Cablevision has been carrying this signal off the air since 1967. Such carriage by Auburn Cablevision is consistent with the policy expressed in *Suffolk Cable Corporation*, 18 FCC 2d 626 (1968).

[2] By *Memorandum Opinion and Order* (FCC 72R-217) released August 10, 1972, the Review Board terminated the hearing and dismissed as moot the pending CATV petitions because they were not supplemented to demonstrate their relevance to the *Cable Television Report and Order*, 36 FCC 2d 143 (1972).

that the concentration of control issue is irrelevant because its applications to serve Auburn were not included in the "Syracuse Television Top 100 Market Study", and Auburn Cablevision is an unaffiliated customer.

4. In our *Cable Television Report and Order*, *supra*, we adopted rules concerning "distant" signal carriage, taking into account the competitive impact on local broadcasting. Auburn Cablevision is in compliance with these rules. Since Channel 9 did not supplement its petition to demonstrate its relevance to our new cable rules, the issue of the competitive impact of cable television on local broadcasting appears to be moot.

5. With regard to the concentration of control of the mass media question raised by the petitioner, we do note that the S. I. Newhouse family, which owns Eastern, also controls a number of mass media outlets in the Syracuse, New York area.[3] The Commission has, of course, been interested in the concentration of the mass media. We have, within the last two years or so, promulgated rules limiting cross ownership of television stations, CATV systems and AM/FM stations in the same city. We are currently considering further restrictions to include common ownership of newspapers and broadcast stations in the same community (see *Further Notice of Proposed Rulemaking* in Docket No. 18110, 22 FCC 2d 339). While we have inquired into CATV-common carrier ownership patterns,[4] we have made no determination that cross ownership between mass media owners and common carriers could have, in general, an adverse effect on the public interest. Primarily, this is because common carriers, unlike mass media operators, have no control over the intelligence being transmitted. But where such a concentration may involve any conflicts of interest which would adversely affect the reliability, effectiveness or reasonableness of the proposed common carrier service, the Commission would be concerned. *Alabama Microwave, Inc.*, 23 FCC 2d 792 (1970).[5] Having analyzed the proposed service under this latter standard, we are unable to perceive, nor has the petitioner alleged, any circumstances under which Eastern would likely be subject to any substantive conflict of interest because of its Newhouse ownership.

6. In view of the foregoing, we find that the instant proposed facilities would serve the public interest, convenience and necessity and that Eastern Microwave, Inc. is technically, financially and otherwise qualified to construct and operate them.

7. Accordingly, IT IS HEREBY ORDERED, That the captioned applications ARE GRANTED.

8. IT IS FURTHER ORDERED, That the aforementioned petition to deny IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[3] Newhouse controls several broadcasting facilities (WSYR–TV, WSYR–FM and WSYR–AM) and two daily newspapers in Syracuse and several CATV systems in the general area.

[4] See Notice of Proposed Rule Making and Inquiry in Docket No. 18891, 23 FCC 2d 833.

[5] Enlargement of issue decision. Review Board decision on competing applications is currently under review.

F.C.C. 73-105

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ACCURACY IN MEDIA, INC. ON BEHALF OF
MARILYN DESAULNIERS
Concerning Fairness Doctrine Re Public
Broadcasting Service

JANUARY 23, 1973.

ACCURACY IN MEDIA, INC.,
501 13th Street, NW.,
Washington, D.C.

Attention: Abraham Kalish, Executive Secretary.

GENTLEMEN: This will refer to the complaint of Accuracy in Media, Inc. (AIM) on behalf of Mrs. Marilyn Desaulniers against the Public Broadcasting Service (PBS) concerning the program "the three r's . . . and sex education" and the complaint of AIM against PBS concerning the program "Justice?".

Both of the above complaints were based on Section 396(g)(1)(A) of the Communications Act of 1934, as amended, and the fairness doctrine.

In regard to the program "the three r's . . . and sex education," AIM contends that PBS violated the fairness doctrine by presenting only a narrow range of contrasting views and that, while the statement was not broadcast, the precise description of the program which prefaced the NET transcript stated that the program examined "sex education in the schools from all points of view." AIM requests that the Commission require PBS to broadcast a program which informs the public about the intelligent and responsible criticisms of sex education programs and determine whether the broadcast of the program was in violation of Section 396(g)(1)(A) of the Communications Act.

The response of PBS to the complaint concerning the program "the three r's . . . and sex education" states that the fairness doctrine does not require quasi-mathematical equality or "balance", but only a "reasonable opportunity" for the presentation of contrasting viewpoints; that the judgment in this regard is that of the licensee; and that where the licensee has acted reasonably or in good faith, neither the Commission nor any outside party may substitute its judgment for that of the licensee. PBS further contends that the program did provide a reasonable opportunity for the presentation of contrasting viewpoints; that while AIM objects to the manner in which opponents of sex education were presented, this is an impermissible intrusion on the journalistic judgment of the broadcaster; that in regard to AIM's objection that the program failed to present certain specific spokesmen who could have best stated the case against sex education, the selection

of spokesmen is the responsibility of the licensee; and that in regard to the contention of AIM that the program contained errors of fact, in the absence of substantial extrinsic evidence of deliberate distortion or slanting, the Commission has often stated that it will make no inquiry into allegations of biased, distorted or incomplete reporting, and no such evidence has been presented. PBS further states that it appreciates interest in and suggestions regarding the network's programming, and that "To the extent that they constitute criticism of our programming in the artistic sense of the word, they are welcome. However, to the extent that criticism becomes an effort to prescribe or proscribe program content, it represents an impermissible intrusion on the good faith of the broadcaster, which is not welcome and which should not be sanctioned."

The reply of AIM to the response of PBS concerning the program "the three r's . . . and sex education" states that the fairness doctrine demands not merely the presentation of "significant contrasting viewpoints," but the presentation of the contrasting views of all responsible elements without bias; that significant contrasting views of very important and responsible elements in the community were excluded from this program, and PBS has presented no evidence that these views have been aired on other PBS programs; that the failure of PBS to provide opportunity for expression of significant views of responsible elements in the community in the sex education controversy clearly violates the letter and spirit of the fairness doctrine; that even in its presentation of some contrasting views PBS appears to have stacked the cards deliberately to present a weak case against sex education programs and a strong case in favor of them; that the Commission should remind PBS that with regard to the need for extrinsic evidence prior to probing charges of distortion in news reporting, these rulings by the Commission were not a license to broadcasters to deliberately distort the facts or operate with such carelessness that the public was misled with respect to important facts; and that licensees have an obligation to welcome and be responsive to criticism from listeners and viewers.

The further response of PBS to the reply of AIM concerning "the three r's and sex education" states that PBS is not "lacking in concern about the accuracy of statements made over the air and [rejecting] the rights of members of the viewing audience to criticize program content", a position which AIM attempts to characterize PBS as having taken; that PBS considers itself very receptive to criticism and suggestions from the public; and that PBS and the organizations which produce programs for national distribution by PBS appreciate input from the public, but that PBS rejects what it terms AIM's effort to dictate programming content and to force PBS or a production organization such as NET to tailor its programming to suit AIM's point of view.

With respect to the program "Justice?", AIM contends that "While the program purported to be a study of the rehabilitation of prisoners, it barely mentioned that subject. It was concerned almost exclusively with a one-sided and essentially false presentation of the cases of Angela Davis and the so-called Soledad brothers." AIM states that it inquired of PBS whether it had provided the stations it serves with

material that would provide balance to what AIM believed to have been a clearly one-sided presentation of "Justice?" and that PBS cited ten programs distributed by it in 1971 that dealt with legal or prison topics, but that none of these programs dealt with the principal topics covered in "Justice?" and could not be properly cited as balancing items for "Justice?". AIM requests that the Commission direct PBS to:

(1) "Withdraw the program "Justice?" from use on the grounds that it violates the objectivity requirements of the Public Broadcasting Act; (2) Present to its viewers a program that devotes one hour to the presentation of the other side of the Angela Davis and Soledad Brothers cases. Since a one-sided broadcast has already been presented, the balancing program should give equal time to the other side and should not itself be a presentation of contrasting points of view. PBS stations should be required to show this program in the same time period and for as many times as they aired "Justice?"; (3) Refrain in the future from distribution of blatantly one-sided and propagandistic programs that clearly violate the mandate of Congress in Section 396(g)(1)(A) of the Public Broadcasting Act."

PBS, in response to the complaint concerning the program "Justice?", states that the controversial issue of public importance with which the program dealt was the functioning of this country's law enforcement system, including the courts and prisons; that the program "Justice?" was announced to the member stations as "one discussing whether blacks can receive true justice in the American Courts, prisons or in post-prison life" and that "this program examined the American judicial system from a black perspective. . . . The general issues of law enforcement and the legal process, including penology and its problems, have been the subject of a wide variety of PBS-offered programming from diverse sources during 1971." PBS further states that a series of ten programs described in a previous letter to AIM was only a partial list indicating the depth of PBS programming on this subject; that AIM has not shown why the programs listed in the letter taken together with "Justice?" do not represent a balanced presentation of the issue involved; that the allegations of AIM are bare and unsupported; that AIM fails to comply with the fourth requirement of the fairness primer that the complainant set forth "the basis for the claim that the station has presented only one side of the question"; that AIM attempts to limit consideration of the numerous programs dealing with the issues tendered by the "Justice?" program by suggesting that six of the programs listed cannot be considered because they were either internally balanced or were intended to balance a program other than "Justice?" and that this is a simplistic approach not countenanced by the fairness doctrine; that a determination of fairness must be based upon a consideration of all programs; that AIM seeks mathematical equality; and that the fairness doctrine requires substantial fairness and balance, not precise equality, and that this has been achieved. PBS further contends that what AIM is complaining about is that more programming should have been devoted to the specific issue of the Angela Davis and the Soledad Brothers cases, but that these cases were simply a part of an overall discussion of justice and prisons—a subject which was treated fully and fairly throughout the series of programs referred to; that AIM is attempting to impose its editorial views as to the subjects that should be covered, the empha-

sis to be employed and the manner in which the subject matter should be handled, and that this is the responsibility of the broadcaster and not of the critics; and that since AIM has not made out a prima facie case, the complaint should be dismissed on the basis of the material AIM has submitted.

The reply of AIM to the response of PBS concerning the program "Justice?" states that PBS does not dispute AIM's contention that this program itself was completely one-sided and lacking in balance; that the only question is whether PBS has produced and caused to be broadcast other programs dealing with the same issues as the program "Justice?" in which there was an adequate presentation of contrasting viewpoints on these issues in a manner that would balance the one-sidedness of "Justice?"; that while PBS lists ten programs "dealing with the complex issues of law enforcement, the courts and prisons," PBS does not demonstrate that any of these programs presented a discussion of the specific controversial issues involved in "Justice?" in a way that brought out viewpoints that contrasted with the views expressed in "Justice?"; and that PBS takes the position that "Justice?" dealt only with the issue of "the functioning of this country's law enforcement system, including courts and prisons" and asserts that any program dealing with or touching upon this broad topic deals with the same matter covered by the controversial program "Justice?" AIM further states that PBS admits that "Justice?" was advertised to the member stations as a program "discussing whether blacks can receive true justice in the American courts, prisons or in post-prison life"; that on the broadcast itself the announcer said "It is an attempt to find out what the penal institutions and correctional system as an institution are doing to rehabilitate those that society has judged to be wrong"; and that by PBS's own descriptions the program clearly dealt with a narrow segment of the broad area of law enforcement and purported to address itself to very specific and limited issues. AIM further contends that the fact that "Justice?" dealt with legal problems and the other programs cited by PBS also dealt with legal problems does not mean that all of these programs dealt with the same problems and issues, and in fact they did not; that the controversial issues of public importance involved in this program were actually quite different from the issue stated by PBS in the program itself; that about three-fifths of the program that was supposed to deal with rehabilitation of prisoners dealt with Angela Davis, George Jackson, Jonathan Jackson, and the case of the Soledad Brothers; that what the audience received was a heavy dose of praise for the above persons; that while the introduction states that the program is an effort to find out what the system is doing to rehabilitate prisoners, the conclusion states that, for anyone, time in prison is an endless nightmare and for black people it is that and more, and thus it concludes that it is the condition inside prisons that needs the most correction; that PBS has not shown that the highly controversial cases of Angela Davis and the Soledad Brothers have been discussed on its programs from the point of view of presenting the case that there is strong evidence that these individuals committed heinous crimes and that they would be guaranteed fair trials under American judicial procedures; that PBS has not shown that it has programmed any

discussion of prison problems which shows the positive efforts that are being made to make life for the prisoners less of a nightmare and to encourage their rehabilitation; that there is no evidence that PBS has presented any discussion with guards and prison officials that would give the other side of the story in the case of the prisoners on "Justice?" who alleged serious mistreatment; that when AIM requested to see the PBS screening report on "Justice?" to determine what recommendation had been made with respect to the problem of lack of balance in the program, it was denied access to the report.

The further response of PBS to the reply of AIM concerning "Justice?" states that AIM does not face the issue of whether the complaint should be dismissed since no prima facie case was made that the fairness doctrine was violated; that AIM fragmentizes the program by listing at least 12 different subjects of controversy and characterizing the list as only some of the controversial issues contained in the program; that AIM asks the Commission to undertake a line-by-line content analysis of the program; that PBS made it clear that the general issues covered by "Justice?" related to the issues of law enforcement and the legal process which have been the subject of a wide variety of programs; that the fairness doctrine does not require that balance be achieved within each program or each segment of a program; and that the fairness doctrine insists on fairness and balance on an overall schedule basis and that AIM has made no prima facie case that this obligation has not been met.

The Commission received a further response from PBS concerning "Justice?" on August 24, 1972 which stated that PBS had continued to offer diverse programming dealing with law enforcement and justice and listed several programs broadcast during 1971 which were omitted from its previous responses to the Commission. PBS stated that on April 21, 1971 it distributed a series of four 90-minute programs entitled "Trial" that dealt in detail with the administration of justice where a black defendant was involved, and that all points of view, including those of law enforcement officials, were presented. PBS also listed seven other programs or series of programs broadcast during 1971 and 1972 dealing with law enforcement and justice. PBS further stated that it anticipated distributing a program in early September 1972 containing a discussion of the New York Commission's investigation of the riots at the Attica State Prison and reiterated that "So long as the issue of law enforcement remains important, public broadcasting will continue to offer diverse and significant programming dealing with it."

DISCUSSION

The fairness doctrine provides [1] that if a station presents one side of a controversial issue of public important, it is required to afford rea-

[1] As we noted earlier, both complaints also asked the Commission to find that the broadcasts complained of violated Section 396(g)(1)(A) of the Communications Act, which authorizes the Corporation for Public Broadcasting to facilitate the full development of educational broadcasting in which programs of high quality will be made available to stations from diverse sources "with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature." We are ruling upon the gravamen of the AIM complaints under the standards of the fairness doctrine. AIM has not given us the benefit of its views as to the Commission's jurisdiction with respect to Section 396, i.e., was the section intended by Congress to set forth a specific standard

sonable opportunity for the presentation of contrasting views. The broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming. Both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views.

With regard to the program "the three r's . . . and sex education," it appears that the program afforded a reasonable opportunity for the presentation of significant contrasting views. The program presented spokesmen who broadcast various views both for and against sex education. You contend that the viewpoint of particular experts was not presented. However, as indicated above, the selection of spokesmen is entirely within the discretion of the licensee and there is no evidence to indicate that PBS acted unreasonably. You also allege that PBS appears to have stacked the cards deliberately to present a weak case against sex education by failing to present spokesmen better able to state the case of those opposed to sex education and, thus, mislead the public with respect to important facts.[2] In the absence of extrinsic evidence of rigging or slanting the Commission will not make inquiry into such allegations. See *Letter to Mrs. Paul*, 26 F.C.C. 2d 591 (1969).

Concerning the program "Justice?" it should be pointed out that the fairness doctrine does not require a line by line analysis and balance as to every statement made in discussing a controversial issue of public importance. In this connection, the Commission in *National Broadcasting Co.* (AOPA complaint), 25 FCC 2d 735 (1970), at 736 stated:

"First, the fairness doctrine requires reasonable opportunity for the discussion of conflicting viewpoints on issues of public importance (Section 315(a)). As the Bureau correctly noted, this does not mean that balance may '. . . be required as to every statement or assertion made in discussing a controversial issue.' Clearly the licensee must be given considerable leeway for exercising reasonable judgment as to what statements or shades of opinion do require offsetting presentation. If every statement, or inference from statements or presentations, could be made the subject of a separate and distinct fairness requirement, the doctrine would be unworkable. More important, as we have pointed up recently in an analogous situation (Memorandum Opinion and Order, FCC 70–881, par. 24), such a policy of requiring fairness on each statement or inference from statements would involve this agency much too deeply in broadcast journalism. We could become an integral part of broadcast journalism, passing on thousands of complaints that some statement, or inference to be drawn from a statement, on a newscast or other news show had not been offset by a countering presentation. A policy of requiring fairness, statement by statement or inference by inference, with constant Governmental intervention to try to implement the policy,

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subject to administrative enforcement rather than merely a general enunciation of the Corporation's functions, or on the further question of how such a standard, if one was intended, differs from that of Section 315 and the fairness doctrine. Nor do we have the views of the Corporation on these issues. We believe that this is an area of considerable doubt, particularly in light of the caution in Section 398 that nothing in Part IV of the Act should be deemed to authorize any department, agency, officer or employee of the United States to exercise any direction, supervision or control over the Corporation. In view of these considerations and the fact that we have fully considered the complaints under well-established fairness doctrine principles applicable to all broadcast licensees, we have refrained from attempting to reach a separate conclusion under Section 396. If AIM or other interested party believes that this issue should be explored further, we will entertain memoranda or briefs directed to it within 30 days, with leave to reply within 20 days after that period.

[2] The spokesmen included Clergymen, parents, and children against sex education.

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would simply be inconsistent with the profound national commitment to the principle that debate on public issues should be 'uninhibited, robust, wide-open' (*New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270)."

PBS admits that the program "Justice?" was announced to the member stations as one discussing whether blacks can receive true justice in American courts, prisons, or post-prison life and does not deny that on the broadcast itself the announcer described the program as "an attempt to find out what the penal institutions and correctional system as an institution are doing to rehabilitate those that society has judged to be wrong"; however, PBS asserts that the controversial issue of public importance with which the program dealt was the functioning of this country's law enforcement system, including the courts and prisons, and cites a series of 18 programs concerning the general issues of law enforcement and the legal process, including penology and its problems. The programs cited by PBS included programs involving such questions as whether governors should be given final veto power over federally funded legal service programs within their states, whether J. Edgar Hoover should have been replaced, whether states should adopt a preventive detention statute, whether a state should negotiate with prisoners for the release of hostages and whether courts should be able to admit evidence police have seized illegally.

It appears that the program "Justice?" presented one side of the controversial issues of "whether blacks can receive true justice in the American courts, prisons or in post-prison life" and "what the penal institutions and correctional system as an institution are doing to rehabilitate those that society has judged to be wrong." These two issues are, of course, part of the general subject of the functioning of this country's law enforcement system, but they are also independently significant as controversial issues and PBS has not denied that "Justice?" presented one side of these issues.

It further appears that the "Trial" series of four programs distributed by PBS on April 21, 1971 provided a reasonable opportunity for the presentation of contrasting views on the issue of "whether blacks can receive true justice in the American courts, prisons or in post-prison life" since that program dealt in detail with the administration of justice where a black defendant was involved and all points of view, including those of law enforcement officials, were presented.

With regard to the issue of "what the penal institutions and the correctional system as an institution are doing to rehabilitate those that society has judged to be wrong" PBS distributed a 90-minute program to its member stations on September 13, 1972, entitled "Attica—The Official Report of the New York State Special Commission." Since PBS advised the Commission that it planned to present this program as part of its continuing coverage of the functioning of this country's law enforcement system, the program was viewed by members of the Commission's staff. While the program centered on the New York State Special Commission's investigation of the riots at Attica State Prison and its conclusions, contrasting points of view concerning prison and prisoner reform, including the views of a substantial number of law enforcement officials, were presented.

In view of the foregoing, it does not appear that further Commission action is warranted at this time. The Commission's role is to determine

whether the licensee or network can be said to have acted reasonably and in good faith and the Commission has stated that the "critical issue is whether the sum total of the licensee's efforts, taking into account his plans when the issue is a continuing one, can be said to constitute a reasonable opportunity to inform the public on the contrasting viewpoints—one that is fair in the circumstances." *Committee for the Fair Broadcasting of Controversial Issues*, 25 FCC 2d 283, 295 (1970). Furthermore, "It is clear that in the context of continuing issues the fairness doctrine does not require a response to an individual speech or presentation, but only a reasonable opportunity over a reasonable period of time." *Letter to Eugene J. McMahon, Esq. and John Nappi, Esquire*, dated August 22, 1972 (———F.C.C. 2d———).

Accordingly, on the basis of the information before it at the present time, the Commission cannot conclude that PBS has acted unreasonably or in bad faith in fulfilling its obligations under the fairness doctrine.

Commissioner Johnson concurring in the result.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
MRS. ESTELLE L. MILLER, COLUMBUS, GA.
Concerning Fairness Doctrine Re Television Station WTVM

FEBRUARY 5, 1973.

MRS. ESTELLE L. MILLER,
627 Westmoreland Road,
Columbus, Ga.

DEAR MRS. MILLER: This letter will refer to your January 12, 1972 fairness complaint against Television Station WTVM, Columbus, Ga. We regret that we are only now able to respond to your complaint but because the limited staff was for many months swamped with complaints and inquiries related to the 1972 primaries, conventions and general elections, which would have become moot unless resolved at once, it was necessary to postpone consideration of this complaint.

In your complaint of January 12, 1972 you allege that as a resident of Columbus, Georgia and as a member of Citizens Against Forced Busing (hereinafter CAFB), you are concerned about WTVM's coverage of Muscogee County School Board's implementation of the U.S. Fifth Circuit Court of Appeals order requiring busing to achieve racial balance; that the station broadcast two interviews with Dr. H. W. Shaw, the Superintendent of Schools, one on July 30, 1971 for 30 minutes, and another on August 1, 1971 for an hour, which presented the School Board's side of the issue and has failed to afford you or your organization a reasonable opportunity to present contrasting views; that, in addition, WTVM broadcast two newscasts on January 5, 1972 and one newscast on January 6, 1972 which gave the impression that CAFB's opposition to the busing issue had subsided, when in fact you state "nothing could be further from the truth"; and that you believe the station supports the position taken by Dr. Shaw and the School Board.

In WTVM's January 30, 1972 response it states that you were afforded an opportunity to respond to the January 5th and 6th, 1972 newscasts, and that you appeared on the 6:00 p.m. and 11:00 p.m. newscast on January 14, 1972; that shortly after Dr. Shaw's July 30, 1971 appearance you were afforded an opportunity and did appear on a similar show; that Dr. Shaw's August 1, 1971 appearance was for the purpose of informing the public of the meaning of the Fifth Circuit Court's decision and was not intended as the station's views on the issues; and that the station admits a controversial issue of public importance exits but that it feels it has, through its overall programming, presented contrasting views.

You replied to WTVM's January 30, 1972 letter on February 8, 1972 stating that you felt the station had not "lived up to its affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming" because it had not "sought-out" contrasting views but only broadcast contrasting views when approached by the CAFB; that the station made it appear that the Fifth Circuit Court of Appeals ordered the busing, when in fact their decision only ordered further desegregation and it was the School Board who decided to use forced busing as a means of achieving further desegregation.

The station again responded by letter dated March 17, 1972 stating that both the July 30 and August 1, 1971 appearances by Dr. Shaw were designed to inform the public on how the School Board planned to implement the Fifth Circuit order, and that it did not intend these broadcasts to be an expression of its position on the matter; that the newscasts of January 5 and 6, 1972 were designed to appraise the School Board's and CAFB's position after four months and, at any rate, you appeared on the January 14, 1972 newscast to present your views. The station further lists 32 separate newscasts broadcast from August 1, 1971 to February 28, 1972 which reflect views opposed to "forced busing", with 19 of these newscasts making specific reference to CAFB or to your opposition to forced busing. In addition, WTVM states that it is affiliated with ABC, which has covered both sides of the controversy surrounding the use of busing to achieve racial balance through ABC's nightly newscasts and interviews with spokesmen for both sides of the issue on the Sunday "Issues and Answers" program.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith.

With respect to the accuracy of program material or allegations that a network, station or newscaster has distorted news or has staged or fabricated news occurrences, the Commission's policy in this area is set forth in its *Letter to Mrs. J. R. Paul*, 26 F.C.C. 2d 591 (1969), a copy of which is enclosed. As you will note, the Commission believes

that it, as the governmental licensing agency, should not attempt to determine the "truth" of a given situation and whether a news report has given the "truth." Rather, it will take action in such cases only when it has substantial extrinsic evidence that the licensee has deliberately distorted its news reports or staged news events.

The busing issue is admittedly a controversial issue of public importance which requires the licensee to afford reasonable opportunities for the presentation of contrasting views. You allege that the station has violated the fairness doctrine by affording more coverage to the School Board's side of the issue, by not making enough time available for opposing views and by failing to encourage other contrasting views on the issue involved. The station, on the other hand, states that it has afforded reasonable opportunities to you to present contrasting views, evidenced by your appearance on the 14th of January and through news coverage of CAFB's continuing opposition to the forced busing. In addition, the station submitted evidence that on 19 different occasions over a 7-month period you or CAFB were specifically mentioned as being opposed to the School Board's implementation of the busing order sent down by the Fifth Circuit Court of Appeals. It therefore cannot be said that WTVM acted unreasonably in regard to the coverage of the views espoused by either the School Board or the Citizens Against Forced Busing, and no further Commission action is warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
MRS. V. E. MINHINNETTE, BATON ROUGE, LA.
Concerning Fairness Doctrine Re Station
WJBO

FEBRUARY 5, 1973.

MRS. V. E. MINHINNETTE,
10688 Ranchwood Drive,
Baton Rouge, La.

DEAR MRS. MINHINNETTE: This letter will refer to your March 22, 1972 complaint against Radio Station WJBO, Baton Rouge, Louisiana. We regret we are only now able to respond to your letter but because the staff was for many months swamped with complaints and inquiries related to the 1972 primaries, conventions and general elections, which would have become moot unless they were resolved at once, it was necessary to postpone consideration of many complaints. You state that WJBO's TOPIC program broadcast an interview with a representative of the National Organization of Women (NOW), who spoke in favor of the Equal Rights Amendment for women, and that as spokeswoman for Females Opposed to Equality (FOE), you requested an opportunity to present contrasting views. The station denied your request alluding to the local status of your organization and stated its preference for having contrasting views presented by a representative of a nationally recognized organization. In addition, the station stated that it had selected the Honorable Ms. Louise Johnson, a Louisiana Legislator, to present contrasting views on the issues surrounding the Equal Rights Amendment on its May 8, 1972 TOPIC program.

In reply to the station's response, you indicated that the spokeswoman selected by the station was not a member of any organization which opposed the Equal Rights Amendment, and renewed your request for an opportunity to present contrasting views in light of the new national status of your organization.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative

duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

Where complaint is made to the Commission, the Commission expects a complainant to submit specific information indicating the basis for the claim that the station or network broadcast only one side of the issue in its overall programming and whether the station or network has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on that issue. From the information before the Commission, it appears that the licensee expressed an intention to afford Ms. Johnson an opportunity to present contrasting views on the Equal Rights Amendment. Thus, it cannot be concluded that WJBO has failed to afford reasonable opportunities for the presentation of conflicting views regarding the matters raised in your letter. A licensee has considerable discretion as to the format devoted to issues of public importance, including selection of the spokesman or spokeswoman for each point of view. You have not provided sufficient information setting forth reasonable grounds for your conclusion that the licensee has failed in its overall programming to present opposing views on the issues about which you are concerned. *Allen C. Phelps*, 21 F.C.C. 2d 12, 13 (1969).

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION
Concerning Fairness Doctrine Re CBS Network

FEBRUARY 5, 1973.

Mr. EDWARD R. GARVEY,
Executive Director, National Football League Players Association, 1300 Connecticut Avenue NW., Washington, D.C.

DEAR MR. GARVEY: This refers to the complaint filed with the Commission January 8, 1973, on behalf of the National Football League Players Association (NFLPA) against the Columbia Broadcasting System Television Network (CBS), and its owned-and-operated stations and affiliates. You complain that CBS failed to meet its fairness doctrine obligations when it rejected NFLPA's request for time to respond to remarks of CBS commentator Tom Brookshier, broadcast on September 17, 1972 during the program "The NFL Today." You allege that those remarks occupied approximately two minutes of the program and were related to the "controversial issue of whether certain former professional football players should share in the pension rights which have accrued to certain other professional football players"; that during the broadcast in question, Mr. Brookshier expressed his opinion that former professional football players not currently included in the National Football League's retirement plan are entitled to inclusion in that plan because these former professional football players were responsible in part for making professional football successful; and that because the question of professional football pension rights was involved in Mr. Brookshier's remarks is a controversial issue of public importance, CBS is obligated to provide NFLPA an opportunity to respond to those remarks over CBS' facilities. You state:

> In its own context—the playing of professional sports—the issue presented herein is in fact a controversial one and could have a direct impact on both the players and the fans of professional football.

You assert further that continued monitoring of CBS programming shows that no view contrary to Mr. Brookshier's has been given treatment by CBS, and that CBS has no present or future plans to present NFLPA's position. In support of the assertion that the referenced dispute is a controversial issue of public importance, you state that on August 2, 1972, the National Football League Alumni Association (Alumni Association) filed a lawsuit against NFLPA and other named defendants in the Rhode Island U.S. District Court wherein

the following relief was sought: (1) inclusion of the Alumni Association's members in the retirement plan currently established for the sole benefit of the NFLPA's members to the exclusion of the Alumni Association's members and (2) the establishment of a separate trust to provide the funds necessary for any retirement benefits to which that court feels the Alumni Association may be legally entitled. Additionally, you refer the Commission to several items which appeared in various newspapers throughout the United States alluding to the dispute between the NFLPA and the Alumni Association.[1]

Following the CBS broadcast of Brookshier's remarks, you state that NFLPA requested CBS, once on September 18 and again on October 26, to grant NFLPA time to respond to those remarks. Your September 18 telegram to CBS stated in pertinent part that "the NFL Players Association hereby demands reply time to respond to the statements of Tom Brookshier (sic) on CBS' pre-game program . . . relating to former players and the 'responsibility of present day players.'" Although CBS rejected your request for response time asserting that there were no fairness doctrine obligations incumbent upon it to grant that request, it did provide you with a facsimile of Brookshier's transcribed remarks. On October 26, NFLPA again requested CBS "to provide a reasonable opportunity for the presentation of contrasting views on the subject of professional football players pension rights." In that correspondence you reiterated the position that CBS was obligated to grant your request for response time since, in your opinion, very serious fairness doctrine questions had been presented by CBS' refusal to grant NFLPA time to respond to Mr. Brookshier's remarks.

CBS replied to this inquiry by again denying your request for response time, asserting that Mr. Brookshier's comments did not deal with a controversial issue of public importance.

CBS justified this refusal on the basis of *Healey* v. *FCC*, ——— U.S. App. D.C. ———, 460 F. 2d 917 (1972), which held that even though an event or a dispute between private parties may warrant the attention of journalists and could thus be considered "newsworthy", such newsworthiness does not in and of itself constitute a controversial issue of public importance.

You also argue that your request for time to reply to Mr. Brookshier's remarks finds support in various decisions of the courts and this Commission; that the "public must not be left uninformed" (*Green* v. *FCC*, 477 F. 2d 323, 329 (D.C. Cir. 1971)); and that "under the First Amendment the public has the right to free and open debate" (*Green*, at 327). You state that "NFLPA readily concedes that the issue involved herein is not of the same magnitude as, for instance, the Vietnam War, school busing, or racial discrimination," contending, however, that "issues short of the above have been held to be worthy of fairness doctrine protection."

[1] You appended eight (8) such newspaper articles to the complaint. These articles, with the exception of one, refer to the lawsuit filed by the Alumni Association or the broader topic of the dispute over pension rights between the Alumni Association and the NFLPA. One article is an Associated Press news story which merely alludes to the fact that the lawsuit was filed and outlines the legal remedies sought by the Alumni Association. The newspapers from which this copy was extracted represent different regions of the United States. Four of the articles deal with the referenced dispute only in passing and incidental to other matters related to professional football discussed in the articles.

In ruling on your complaint, the primary question is whether the licensee was unreasonable or arbitrary in deciding that the remarks broadcast did not pertain to or raise a controversial issue of public importance. The fairness doctrine vests the licensee with the discretion to determine in the first instance whether a controversial issue of public importance has been broadcast.

As the Commission stated in *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 Fed. Reg. 10416 (1964):

> The fairness doctrine deals with the broader question of affording reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance. Generally speaking, it does not apply with the precision of the "equal opportunities" requirement. Rather, the licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation—as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming. See par. 9, Editorializing Report. In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith. There is thus room for considerably more discretion on the part of the licensee under the fairness doctrine than under the "equal opportunities" requirement.

In support of your fairness doctrine request that CBS provide time to respond to Mr. Brookshier's remarks, you cite *Green* v. *FCC*, *supra*, as authority for the proposition that both the First Amendment and the public interest standard found in the Communications Act of 1934 require CBS to grant your request so that the public not be left uninformed about the dispute between the NFLPA and the Alumni Association. However, *Green* additionally held that fairness doctrine complainants must show that the licensee's exercise of judgment under the fairness doctrine was "unreasonable, arbitrary, or in bad faith." (*Id.* at 324).

Healey v. *FCC*, *supra*, is cited by CBS as authority for its position that a controversial issue is not involved.[2] In *Healey*, the court focused on whether the licensee had acted unreasonably in deciding that the dispute between the two parties was not a controversial issue of public importance, and held that a dispute between private parties does not necessarily raise a controversial issue of public importance thus entitling complainant to invoke the fairness doctrine. The Court stated:

> Merely because a story is newsworthy does not mean that it contains a controversial issue of public importance. Our daily papers and television broadcasts alike are filled with news items which good journalistic judgment would classify as newsworthy, but which the same editors would not characterize as containing important controversial public issues. . . . Even if we considered the Putnam broadcast was primarily or substantially directed against petitioner Healey personally, there was still raised no controversial issue of public importance. *Id.* at 922.

[2] In *Healey*, the issue was whether the complainant's role as a Communist was a controversial issue of public importance requiring the licensee to provide complainant with time to respond to remarks made on the licensee's airwaves about complainant's activities as a member of the Communist Party. The licensee had permitted a commentator to comment on a newspaper story concerning complainant's role as a Communist in the United States. The comments made on the licensee's facilities were in derogation of the generally favorable newspaper article. The licensee subsequently refused complainant's request for time to respond to these comments.

The court further stated,

> To characterize every dispute of this character as calling for rejoinder under the fairness doctrine would so inhibit radio and television as to destroy a good part of their public usefulness. . . . It would in every way inhibit that "robust public debate" that the fairness doctrine was born to enhance. *Id.* at 923.

Finally, when ruling on questions of whether the facts of each case warrant the labeling of any particular matter a controversial issue of public importance, the Commission must determine whether in fact the questioned matter is one which calls upon the public, or the community, to make a decision or choice, and if so, whether the licensee has concluded unreasonably that the matter was not a controversial issue of public importance. See for example, *Retail Store Employees, Local 880* v. *FCC*, ——— U.S. App. D. C. ———, 436 F. 2d 248 (1970); *Editorializing Report*, 13 FCC 1246, par. 4.

CBS here determined that Mr. Brookshier's remarks of September 17 neither pertained to nor raised any controversial issue of public importance, although obviously Brookshier's comments explicitly referred to the substance of the lawsuit filed by the Alumni Association against the NFLPA. However, it does not appear that this dispute had assumed proportions of such controversy and public importance as to come within the fairness doctrine. Rather, the evidence submitted herein clearly shows that NFLPA and the Alumni Association are engaged in a dispute wholly private in nature and only incidentally related to or of interest to the public. NFLPA, in its first inquiry to CBS on September 18, implied that the issue was the "responsibility of present day players" to former players, later characterizing the pertinent issue as professional football player pension rights. The attachments submitted by the NFLPA in the form of newspaper copy show that there is interest in the matter by the nation's sportswriters and their readers, but not the kind of controversy which would raise the issue to one of public importance so as to warrant response time under the fairness doctrine. Even the NFLPA concedes that, at best, the issues involved are fairly well concentrated within the confines of the professional football sports world and fans of the game. Thus, we do not believe that CBS was unreasonable or arbitrary in determining that the referenced dispute was not such an issue falling within the fairness doctrine.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
STEPHEN J. PLATT, NEW YORK, N.Y.
Concerning Fairness Doctrine Re ABC Network

FEBRUARY 5, 1973.

Mr. STEPHEN J. PLATT,
194 Riverside Drive,
New York, N.Y.

DEAR MR. PLATT: This will refer to your letters of complaint, dated September 20, October 7, and November 2, 1972, alleging that the ABC Television Network has violated the fairness doctrine in failing to cover the shooting sport events in its 1972 Olympic Games programming. In particular, you allege that ABC has "an established editorial policy which favors very stringent gun control bordering or not allowing individuals to own firearms regardless of reason," as evidenced by editorials broadcast by radio and television stations licensed to ABC (WABC Radio editorial No. 32, 1972 and WABC–TV editorial No. 21, 1971). You also state that in its Olympics programming, "ABC completely avoided news coverage, comment or any mention of any shooting sport event." Upon these allegations of fact, you contend that "when a licensee selects segments of an event (here, the Olympic Games) in conformity with its previously-established editorial policy (here, a policy supporting strict gun control) it is, in fact, presenting an editorial statement rather than an objective report" and that such selection "is no more than an extension of this policy." You conclude that "If the fairness doctrine is to be interpreted as the right of the public to be informed, then exclusion or censorship is certainly contrary to that doctrine."

In response to your inquiries, ABC states by letter dated October 10, 1972 that although the subject of gun control is "highly controversial" and stations licensed to ABC, Inc. have taken editorial stands on that subject, the ABC Television Network "has never taken a position on this matter." ABC also states that its stations "offer equal time to opponents of the position they purvey," and that in the network's "news and documentary programs, every effort is made to present balanced, impartial commentary on controversial issues." The network further states with respect to your complaint concerning its failure to cover the shooting sport events in its Olympics programming that:

> **The selection of Olympic events was based on consideration of events which we felt were of interest to the broadest possible audience. Because of the scope of the Games, and the limitations imposed by time, selectivity was a necessity.**

ABC also cites "programs like 'The American Sportsman'" as indicating that the network has "recognized the interest in shooting sports over the years."

In reply, you take exception with ABC's explanation that its selection of Olympic events was based on ascertainment of audience interest, stating:

> The shooting sport events had the second largest number of participants at the Olympics. Increasing interest was the introduction of a new event—boar shoot. Some of the shooting sport events provide more action per minute than any other event.

You also cite "the sales figures for shooting sport equipment" and "the estimates of the numbers of Americans who participate in shooting sports" as contradicting ABC's programming judgments in this matter. Finally, you state that "The American Sportsman" "is an old series showing sports personalities engaged in sporting activities such as fishing, sailing, mountain climbing and hunting," that this program "fails to provide any perspective towards the general category of shooting sports," and that "ABC, in its current programming, has no provision for coverage or mention of shooting sports."

You have requested the Commission to review this matter under the fairness doctrine and other applicable Commission rules and policies.

As explained to you in previous correspondence, where complaint is made to the Commission under the fairness doctrine, the Commission expects a complainant to submit specific information indicating, *inter alia*, reasonable grounds for the claim that the station or network involved has presented one side of a controversial issue of public importance and has not afforded, nor plans to afford, a reasonable opportunity for the presentation of contrasting views on that issue in its overall programming. As one court has recently observed:

> On a complaint under the fairness doctrine, the burden is not only on the complainant to define the issue, but also to allege and point specifically to an unfairness and imbalance in the programming of the licensee devoted to this particular issue. It is not enough for the complainant to allege there is a controversial issue of public importance on which the complainant wants to be heard. . . The essential element in invoking the fairness doctrine is that the licensee has not hitherto provided fair and balanced programming on this particular issue, and therefore, and only therefore, can the complainant assert a right for someone to be heard to rectify the existing imbalance. *Healey* v. *FCC*, 460 F. 2d 917, at 921 (D.C. Cir. 1972).

Although the subject of gun control may be a controversial issue of public importance, your complaint fails to make any allegation or statement of fact that either the ABC network or stations licensed to ABC have not afforded reasonable opportunity for the presentation and discussion of contrasting views on that issue in their overall programming. In this regard, the fact that ABC did not cover the shooting sport events in its Olympics programming and does not present regularly scheduled programs dealing with shooting sports does not, by itself, evidence failure to comply with fairness *vis a vis* the issue of gun control. Absent specific, detailed information indicating reasonable grounds for belief that either the network or stations licensed to ABC have not afforded reasonable opportunity for a discussion of contrasting views on that issue, no Commission action is warranted.

Should the Commission receive such information, it will consider the matter further.

Aside from fairness doctrine implications, the gravamen of your complaint is against ABC's selection of the events covered in its Olympics programming and its alleged failure to present sufficient programming on shooting sports. In this regard, Section 326 of the Communications Act specifically prohibits Commission censorship of broadcast material, and the Commission will not attempt to dictate the selection or presentation of particular programming by networks or station licensees. As the Commission has stated: "With respect to issues of program selection and control, the Commission . . . is not concerned with matters essentially of licensee taste or judgment." *Programming Policies*, 25 FCC 2d 342, at 343 (1970). Similarly, in distinguishing the fairness doctrine from matters wholly of licensee or network programming selection and judgment, the Commission has held:

> The fairness doctrine does not in any way prescribe the presentation of a news items or viewpoint nor does it specify any particular manner of presentation. . . . Aside from unusual situations . . ., it is not the proper concern of this Commission why a licensee presented a particular film segment or failed to present some other segment. Such choices are not reviewable by this agency. . . . Rather, we shall consider the overall question of whether reasonable opportunity for contrasting viewpoints was afforded with respect to this and other controversial issues referred to in the complaints we have received. *Letter to ABC et al*, 16 FCC 2d 650, 655–56 (1969).

Thus, neither the fairness doctrine, nor any other rule or policy of the Commission requires ABC or its stations to present specific programming dealing with shooting sports *per se*, and the Commission will not substitute its judgment for that of the network or stations in such programming matters.

You additionally allege that ABC excludes any significant coverage of shooting sports from its programming "in conformity with its previously-established editorial policy" favoring stringent gun control measures. However, in order for the Commission appropriately to commence action in this area, it must receive substantial extrinsic evidence of deliberate suppression of news or program material based upon the prejudices of the licensee or designed to advance its private interests, as, for example, statements by individuals having personal knowledge that the network or licensee ordered the suppression of particular news coverage or other programming for such purposes. As the Commission has stated with respect to the analogous area of news staging and distortion:

> . . . we believe that the critical factor making Commission inquiry or investigation appropriate is the existence or material indication, in the form of extrinsic evidence, that a licensee has staged news events. Otherwise the matter would again come down to a judgment as to what was presented, as against what should have been presented—a judgmental area for broadcast journalism which this Commission must eschew. For the Commission to investigate mere allegations, in the absence of a material indication of extrinsic evidence of staging or distortion, would clearly constitute a venture into a quagmire inappropriate for this government agency. *ABC et al, supra*, at 657–58.

It is noted in this regard that while ABC acknowledges that certain stations licensed to it have taken editorial stands on gun control, it states that the network itself has not done so. In any event, your complaint does not present any extrinsic evidence to support an allega-

tion of deliberate suppression of news or program material for the purpose of advancing the licensee's editorial position or serving its private interests.

As the Commission stated in *Citizens Communication Center*, 25 FCC 2d 705, 707:

> **Absent extrinsic evidence going to a policy inconsistent with the public interest (e.g., testimony of a station employee concerning his instructions from management), the Commission will not intervene in the programming process of a licensee, and specifically will not seek to establish the "true" motives by inference or credibility findings in this sensitive area. Commission interference would be inconsistent with the policies and spirit of the First Amendment and thus with the public interest.**

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
HORACE P. ROWLEY III, NEW YORK, N.Y.
Concerning Fairness Doctrine and Equal Opportunities Provision of Section 315 Re Television Stations WNET, WNBC–TV and WABC–TV

JANUARY 30, 1973.

HORACE P. ROWLEY III, Esq.,
416 East 81st Street,
Apartment 3–C,
New York, N.Y.

DEAR MR. ROWLEY: This is in reply to your letters concerning Television Stations WNET, WNBC–TV and WABC–TV, New York, New York in which you allege various violations of the fairness doctrine and the "equal opportunities" provision of Section 315 of the Communications Act of 1934, as amended.

In your June 21, 1972 letter concerning WNET you state that on May 8, 1972 President Nixon instituted a new war policy which consisted of bombing and mining North Vietnam; that the station on May 11 and 16 broadcast three programs totaling six ond one-half hours which were devoted to the presentation of the "extreme anti-war policy viewpoint" concerning the new war policy; that the programs featured well-known anti-war advocates, including Daniel Ellsberg and Jane Fonda; that WNET excluded other responsible viewpoints and denied the Administration a reasonable opportunity to express its viewpoint; that the controversial issue in this case was not the general issue of United States involvement in Vietnam but the specific issue of the wisdom of the "new U.S. policy of bombing and mining North Vietnam"; that on May 8, 1972 WNET broadcast a thirty-minute program featuring Senator Barry Goldwater, who expressed the Administration viewpoint on the U.S. bombing and mining policy in North Vietnam, and WNET broadcast various programs before May 8, 1972 in which spokesmen discussed the Administration's views on the Vietnam war; that the selection of spokesmen, format and the amount of time allotted to the Administration to present its viewpoints on the new bombing and mining policy was unreasonable and arbitrary; that the fairness doctrine requires a licensee to "discuss the spectrum of all responsible viewpoints"; that various presentations of Administration spokesmen and anti-war spokesmen represent extreme viewpoints and do not constitute a presentation of the possible spectrum of viewpoints held by the twelve million people in WNET's potential audience; that you asked WNET to present other contrasting viewpoints, but that it refused to do so; and that WNET

109–027—73——5

has failed to fulfill its fairness doctrine obligations. You enclosed copies of correspondence between you and WNET.

In reply to a letter you wrote to WNET on June 3, 1972, the licensee sent you a response dated June 6, 1972 in which it stated that ". . . Our entire program schedule since the beginning of the year, has contained a fair balance of opposing views and spokesmen on issues associated with United States' involvement in Vietnam"; and that in its overall programming it had met its fairness doctrine obligations regarding the Vietnam conflict. The licensee listed a number of speakers who presented viewpoints contrasting to those of anti-war spokesmen in the following passage:

> By way of example, in January, our THIRTY MINUTES WITH . . . series featured Melvin Laird who expressed numerous views in support of the President's foreign policy. Also, in January, we presented a ninety minute special which included President Nixon's State of the Union address. Since February, the FIRING LINE, THIS WEEK and THIRTY MINUTES WITH . . . series have presented numerous spokesmen such as Ambassador Ellsworth Bunker (Firing Line 2/6/72), Richard Kleindienst (Thirty Minutes with . . . 2/19/72), Admiral Thomas Moorer (Thirty Minutes with . . . 3/9/72), South Vietnam's President Nguyen Van Thieu (This Week 3/29/72 and 4/5/72), Senator Robert Dole (Thirty Minutes with . . . 4/13/72), Congressman Robert Price (This Week 4/26/72), Patrick Buchanan (Thirty Minutes with . . . 5/4/72), President Nixon (This Week 5/10/72), Senator John Tower (Thirty Minutes with . . . 5/18/72) and several U.S. war veterans (This Week 5/31/72).
>
> In addition, in April, Channel 13 carried three consecutive hours in prime time of Secretary of State William Rogers' testimony before the Senate Foreign Relations Committee. Just recently, we telecast President Nixon's national address on the mining of North Vietnamese ports and this was followed by an interview with Senator Goldwater, commenting on the action. Further, our recently inaugurated 51st STATE series has included views and spokesmen who support continued U.S. involvement in Vietnam.

In response to WNET's reply you state in a June 8, 1972 letter to WNET that WNET has not presented "any organized argument in support of the new policy" and that the licensee completely excluded the moderate viewpoint which is in the center between President Nixon and Miss Fonda.

In a letter to you dated June 21, 1972, WNET states with reference to your allegations concerning the broadcasts on May 11 and 16:

> The two FREE TIME offerings in May were not exclusively devoted to mining of North Vietnamese harbors. They also discussed at length, Vietnam history, the administration's escalation policies, the effects of a prolonged war in Southeast Asia, the ability of the President to lead our country, the air war, student unrest, the P.O.W. issue, and a host of other issues associated with current U.S. foreign policy.
>
> In this connection, we believe that a discussion of the mining of Haiphong, and other North Vietnamese ports is part of the larger, more important issue of the Government's policy of military escalation (which dates as early as March 6 and which achieved prominence on April 10 with the announcement that the government was resuming B–52 raids—a tactic last employed in November, 1967). For your information, both the primary issue and the sub-issue were extensively discussed over our facilities.

WNET included a list of various programs it presented on the issue of increased military escalation of the Vietnam War, including the bombing and mining of North Vietnam.[1]

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[1] After May 8, 1972 WNET stated it broadcast the following programs which included a discussion of the bombing and mining of North Vietnam: (1) *NPACT Special* broadcast on May 8 featuring President Nixon's address to the Nation and an interview with

In a letter dated June 28 and supplemented by several other letters, including one dated October 31, 1972, you filed another complaint against WNET in which you allege violation of Sections 315(a), 399 and 312(a)(7) of the Communications Act of 1934, as amended, and Section 73.657(c)(2) of the Commission's Rules and Regulations. You state that New York State held its Democratic Presidential primary on June 20, 1972; that WNET on June 15, 1972 broadcast a thirty-minute program featuring Senator George McGovern; that during the program Senator McGovern debated a group of citizens who did not support his Presidential candidacy; that Senator McGovern's appearance was a "use" under Section 315; that WNET had an affirmative duty under Section 315(a) and Section 73.657(c)(2) to offer an equal opportunity to the other five legally qualified candidates for nomination; that none of the legally qualified candidates filed a request with the station for equal opportunities; that you do not represent any candidate; that "Under the First Amendment neither Congress nor the FCC has power to make a law that if a licensee offers or permits candidate A to use its broadcast facilities, then the licensee has discretion to either offer equal opportunities to rival candidates B and C, or to wait for them to request them"; that any political appearance which constitutes a use and which is broadcast five days before an election raises an affirmative obligation on the part of a licensee to offer time to all other legally qualified candidates; and that WNET's allowing Senator McGovern to use its broadcast facilities without charge and within five days of the election was an endorsement of Senator McGovern's candidacy.

The licensee's June 21, 1972 response to you states that:

> The "equal opportunities" provisions of the Communications Act provide that when a broadcaster permits the use of his facilities by a legally qualified candidate for public office, he is required to provide equal opportunity to all other such candidates for that office. However, the *broadcaster need not offer the time.* Rather, it is incumbent upon the candidate seeking the use of facilities to make a *timely request* therefor. For your information, we have not, to date, received such a request. However, if such a request is properly directed to the station, you may be assured that WNET will comply.

The licensee also states that Section 399 was not applicable to Senator McGovern's appearance and that WNET has not endorsed or editorialized on behalf of Senator McGovern's candidacy.

By letter dated August 3, 1972 you filed a complaint against WNBC–TV in which you allege that WNBC–TV has not covered and does not intend to cover the issue of "whether or not TV news programs are biased" and therefore has failed to meet its fairness doctrine obligations; that television news bias is a controversial issue of national importance (you cite various books, publications, articles and speeches

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Senator Barry Goldwater, (2) *This Week* broadcast on May 10 featuring filmed coverage of President Nixon's statement describing his action to prevent access to North Vietnamese ports and a report by a WNET staff member describing the technical objectives of new military strategy, (3) *51st STATE* broadcast on May 11 featuring "Man in the Street" interviews supporting the new military activities at Haiphong, and the views of Senator James Buckley and Senator Robert Dole supporting the President, (4) *51st STATE* broadcast on May 16 featuring interviews with several construction workers who supported the military escalation policy, and (5) *Thirty Minutes With* broadcast on May 18, featuring Senator John Tower supporting the mining of Haiphong. WNET also lists a variety of programs broadcast from March 29, to May 8, 1972 featuring speakers including President Thieu, Secretary of State William Rogers and Congressman Robert Price, who discussed the advantages of increased military escalation of the War, including the renewed bombing of North Vietnam.

to support your contention); that it is the station's responsibility under the fairness doctrine to initiate programming on television news bias; and that the Commission has the power to require such programming. You request "the Commission to order WNBC to forfeit an appropriate sum of money to the U.S., because WNBC has acted in 'bad faith.'" You include with your complaint copies of correspondence between you and WNBC–TV.

In a letter to you dated August 25, 1972, WNBC–TV states:

> WNBC–TV, in its news and public affairs programming, has presented to its public views concerning the accuracy and/or biasness of news programs. Within the past year, Edith Efron and James Keogh, both of whom are mentioned in your letter of August 3, appeared on the Today Show and discussed their opinions on this matter. WNBC–TV has also broadcast appearances of Dorothy Rabinowitz, a writer with *Commentary* and John Erlichman, Assistant to the President for Domestic Affairs, who discussed their similar positions. In addition, the views of Vice President Spiro Agnew on the accuracy of the media have received widespread dissemination in the news programs broadcast by WNBC–TV.

WNBC–TV also states that the fairness doctrine does not require time to be afforded to every view on an issue. In your August 31, 1972 response to WNBC–TV's August 25 letter, you again assert generally that WNBC–TV has failed to discuss television news bias and has failed to present the spectrum of all responsible viewpoints on the issue. You state (to WNBC–TV):

> You have apparently given Efron, Erlichman, Keogh and Rabinowitz time to state their viewpoints, but you have not given them time to state the grounds for believing that they are true. Also, you have not given time to other responsible viewpoints on the spectrum. *See*, L. Brown, *Television* (1971); R. Cirino, *Don't Blame the People* (1971); M. Mayer, *About Television* (1972); S. Mickelson, *The Electric Mirror* (1972). Next month Edward J. Epstein will publish a new book about this issue. Finally, you have not given time for the broadcasting industry viewpoint and the grounds for believing that it is true.

In a letter dated October 30, 1972 you allege that WABC–TV has not complied with its obligations under the fairness doctrine. You state that WABC–TV employs Geraldo Rivera, "a super-star reporter and commentator," and uses him "as an instrument to influence public opinion"; that Mr. Rivera in his off-camera activities has publicly endorsed and campaigned for Senator George McGovern for President; that from October 1 through October 23, Mr. Rivera reported and commented on WABC–TV's two daily newscasts; that there was a "general correlation" between the issues that Senator McGovern discussed and the issues that Rivera discussed; that WABC–TV ordered Mr. Rivera either to stop reporting until after the election; that Mr. Rivera at first decided to stop his political activities, then reversed his decision and stopped reporting until after the election; and that WABC–TV "must give 30 minutes of free time to the supporters of President Nixon because it has already given 30-minutes of free TV time to Rivera who is an "open and notorious supporter" of Senator McGovern. You further state that Section 315 does not apply to Mr. Rivera because he is not a candidate, but that under the fairness doctrine licensees must give "equal time" in situations where a television celebrity is associated as a supporter of a specific candidate and has appeared almost daily on newscasts where that candidate's election was discussed. You state:

[C]learly, the rule is that if a licensee has given free TV time to a reporter and commentator (1) who is a celebrity, (2) who is an open and notorious supporter of 1 candidate, and (3) has frequently appeared on newscasts where the election was discussed, then the licensee must give equal time to rival candidate's supporters.

The rule has a very narrow application. If a reporter is not a celebrity, then the rule does not apply. If the reporter is a celebrity and *privately* supports a candidate, then the rule does not apply. If the reporter is a celebrity, publicly supports a candidate and does not frequently appear on newscasts where the election is discussed, then the rule does not apply.

You enclosed copies of correspondence between you and WABC–TV. In reply to your complaint, ABC in a letter to you dated October 25, 1972, states that:

For your information, the "equal opportunities" requirement of Section 315 of the Communications Act of 1934, as amended, pertains exclusively to appearances by "legally qualified candidates" for public office. Inasmuch as Mr. Rivera is not a candidate for public office, Section 315 is clearly inapplicable to his appearances. . . .

In addition, your letter does not refer to a single instance where Mr. Rivera's appearance on the WABC–TV EYEWITNESS NEWS program has involved direct or indirect support for Senator McGovern's candidacy. We do not believe that there has been a single news report broadcast by WABC–TV in which Mr. Rivera has expressed a partisan viewpoint or has engaged in advocacy on behalf of Senator McGovern. We believe that Mr. Rivera has at all times conducted himself as an objective and responsible journalist whose personal viewpoints, political or otherwise, are not reflected in his coverage of the news on WABC–TV.

Certain basic principles in the application of the fairness doctrine apply to all of the above situations. We will discuss these principles first, and then take up the individual complaints. The fairness doctrine requires a station which presents one side of a controversial issue of public importance to afford reasonable opportunity for the presentation of contrasting views by responsible spokesmen. These views need not be presented on the same program; the opportunity may be afforded in the station's overall programming, including news programs, interviews, discussions, debates, speeches and the like. The purpose of the doctrine is to promote the fullest possible debate on public issues, to the end that the public will be informed. See *Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949). The fairness doctrine does not require precise equality in opportunity such as is required for candidates for public office, but rather that reasonable opportunity be afforded. Nor does it require a separate opportunity for every shade of viewpoint. Moreover, the licensee has considerable discretion in the manner and timing of achieving fairness. The licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation, to determine whether a controversial issues of public importance is involved, what viewpoints have been and should be presented, the format and spokesmen to present the viewpoints, and all other facets of such programming. The Commission will not substitute its judgment for that of the licensee, who is responsible for station operation; the Commission limits its role to determining whether the licensee has acted reasonably and in good faith. See *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 40 FCC 598 (1964).

In your fairness doctrine complaint against WNET you state that the controversial issue in the case is not the general issue of United

States involvement in Vietnam but the specific issue of the wisdom of the "new U.S. policy of bombing and mining North Vietnam" announced by President Nixon on May 8, 1972. In applying the fairness doctrine, it is sometimes difficult to determine whether only one general issue exists or whether another distinct but related issue arising out of the general issue should be treated separately. Surely, the bombing and mining of North Vietnam became controversial issues of public importance, although they are subordinate to the general Indochina war issue. For purposes of this discussion, we can assume that the controversy over the bombing and mining is sufficiently separable from the general controversy over the Vietnam war to be treated as a distinct issue under the fairness doctrine. However, we do not feel it was unreasonable for WNET to conclude that the bombing and mining policy announced by President Nixon on May 8 was part of the larger issue of military escalation of the war which dated back to March and April of 1972. WNET notes that on April 10 the government announced renewed B–52 bombing raids in North Vietnam. Therefore, while the bombing and mining of North Vietnam could perhaps be treated as a separate controversial issue we do not agree with your conclusion that this issue need necessarily be isolated from other events in the way you urge. We believe that WNET was not unreasonable in considering as relevant programs it broadcast in March and April 1972 concerning the military escalation of the war, and specifically the renewed bombing of North Vietnam, in determining whether it fulfilled its fairness doctrine obligation on this issue.

You state that WNET failed to fulfill its fairness doctrine obligations concerning the new bombing and mining policy in that it presented only the "extreme" viewpoints on that issue (i.e., the anti-war viewpoint and the Administration viewpoint), and that it failed to present the "moderate viewpoint which is in the center between President Nixon and Miss Fonda." You argue that the fairness doctrine requires presentation of the spectrum of all responsible viewpoints held by the twelve million people in WNET's potential audience. As stated above, the fairness doctrine does not require a licensee to provide an opportunity for the presentation of every viewpoint on an issue. Rather, a licensee is called upon to make reasonable judgments as to the viewpoints to be presented and the spokesmen to present the viewpoints. WNET determined that the broadcast by the anti-war speakers you listed and the various Administration spokesmen cited in its June 6 and 21 letters fulfilled its obligation to present opposing viewpoints. Your assertion that WNET failed to present the "moderate viewpoint which is in the center between President Nixon and Miss Fonda" fails to state how WNET was unreasonable in its selection of viewpoints. WNET's decision that the spokesmen it presented on the issue of the bombing and mining of North Vietnam presented significant contrasting viewpoints does not appear to be unreasonable on the basis of the information before the Commission. Thus, your complaint that WNET failed to fulfill its fairness doctrine obligations on the grounds that it did not present "all responsible viewpoints" must be denied.

You also assert that WNET's selection of spokesmen and format to present the Administration's viewpoint on the bombing and mining

of North Vietnam was unreasonable and arbitrary. WNET presented various Administration spokesmen commenting on the bombing and mining policy, including President Nixon (May 8 and 10, 1972), Senator Barry Goldwater (May 8, 1972), Senator Buckley (May 11, 1972), Senator Robert Dole (May 11, 1972) and Senator John Tower (May 18, 1972). WNET also broadcast "Man in the Street" interviews featuring supporters of the Administration on May 11, 1972 and interviews on May 16 with construction workers who also supported the President's military escalation.

WNET used various formats to present the viewpoints, including (i) the President's address to the nation in live, uninterrupted, prime-time programming in which Mr. Nixon presented his views in the mode and format he chose; (ii) studio interviews; (iii) speeches and (iv) man-in-the-street interviews. You have not furnished the Commission with any significant information that substantiates your claim that the licensee's selection of the above named spokesmen to present opposing views and the format in which they appeared was unreasonable and arbitrary.

You also contend that WNET has failed to afford opposing spokesmen with a reasonable opportunity to present their views on the basis of disproportionate amounts of time allotted to each side. In your June 28 letter, you state that only thirty minutes were given to Administration spokesmen whereas anti-war spokesmen were allotted six and one-half hours between May 8 and June 28, 1972. However, you fail to include in your computation President Nixon's May 8 and 10 appearances, Senator Buckley's and Senator Dole's May 11 statements and Senator John Towers' statement on May 18 in support of the Administration's new bombing and mining policy. You also fail to consider that the issue of bombing and mining North Vietnam was dealt with on programs broadcast before May 8, 1972; and whether the President's policy of bombing and mining North Vietnam was mentioned in any other WNET programs.[2] The Commission expects an individual who lodges a fairness doctrine complaint to set forth reasonable grounds for concluding that the station failed to afford reasonable opportunity for presentation of contrasting views in its overall programming, and does not plan to present opposing views. *Allen C. Phelps*, 21 F.C.C. 2d 12, 13 (1969). As indicated above, you have not presented such information to the Commission.

In your second complaint against WNET, you allege that Senator George McGovern's thirty minute appearance on a WNET June 15, 1972 program was a "use" by a candidate and that failure of WNET to offer equal opportunities to the other legally qualified Democratic candidates running for President in the New York primary was a violation of Section 315(a) of the Act and 73.657(c)(2) of our rules. Section 315 of the Communications Act of 1934, as amended, states that if a licensee permits any person who is a legally qualified candidate for public office to use a broadcasting station, he must afford "equal opportunities" to all other such candidates for that office in

[2] We also note that WNET states that the six and one-half hours broadcast on May 11 and 16, to which you refer, were not exclusively devoted to a discussion of the bombing and mining policy but also included discussions of the P.O.W. issue, Vietnam history, student unrest and the ability of President Nixon to lead our Country.

the use of such broadcasting station. If a legally qualified candidate appears on a bona fide newscast, bona fide news interview, bona fide documentary or on-the-spot coverage of a bona fide news event, such an appearance will not be deemed a use of a broadcasting station for the purposes of Section 315. The Commission's rule with respect to television political broadcasts coming within Section 315 of the Communications Act is Section 73.657.

In the Communications Act of 1934, as amended, Congress specifically authorized the Commission to adopt rules to effectuate the provisions of Section 315. Thus, Section 315(a) provides that "The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this Section."

The Commission promulgated the following regulation with respect to all equal time requests:

(e) Time of request. A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use, giving rise to the right of equal opportunities occurred: Provided, however, That where the person was not a candidate at the time of such first prior use, he shall submit his request within 1 week of the first subsequent use after he has become a legally qualified candidate for the office in question. (See Section 73.657(c) of the Commission's Rules and Regulations.)

Thus, a licensee, except in rare instances [3], has no affirmative obligation to contact a candidate and offer him equal opportunities. The Commission has consistently held that the request for equal time must be initiated by the candidate or his representative and must occur within seven days of the first prior use. See 35 Fed. Reg. 13045, 13066–67 Section IX (1970). In this case, both you and licensee agree that no legally qualified candidate or his representative requested equal time; that you do not represent any candidate; and that WNET would offer its facilities to any legally qualified Democratic Presidential candidate who made a timely request for "equal opportunities." Thus, WNET did not violate Section 315 or Section 73.657. Further, you have not presented any evidence that WNET during its broadcast of the Senator McGovern interview editorialized or endorsed Senator McGovern's candidacy, in violation of Section 399 of the Communications Act.

Your allegation that WNET violated Section 312(a)(7) by willfully or repeatedly failing "to allow reasonable access to or permit purchase of, a reasonable amount of time for the use of a broadcasting station by a legally qualified candidate . . ." is unsupported. WNET's broadcast of a free 30 minute interview with Senator McGovern does not in and of itself violate Section 312(a)(7) as you appear to believe.

With respect to WNBC–TV you allege that the station has not covered the issue of "whether or not TV news programs are biased." However, WNBC–TV listed in its August 25, 1972 response to you a variety of appearances by spokesmen who have discussed the news

[3] You cite *Dolph-Petty Broadcasting Co.*, 30 F.C.C. 2d 675 (1971), to support your contention that since Senator McGovern appeared five days before the New York primary election, WNET should have notified Senator McGovern's opponents. However, we do not believe the situation here can be equated with that in *Dolph-Petty*. There the licensee gave free time to one opponent only two days before the election. Here Senator McGovern appeared five days before the election, which we believe afforded ample time within which his opponents could have requested equal opportunities.

bias issue. In both your August 3 and August 31, 1972 complaints against WNBC–TV you failed to provide specific information setting forth reasonable grounds for your conclusion that the licensee in its overall programming has not presented or does not intend to present opposing views on the issue of television news bias. We note that, contrary to your assertions, WNBC–TV appears to have covered this issue. Thus no action regarding WNBC–TV is warranted.

In your complaint against WABC–TV you state that under the fairness doctrine licensees must provide equal opportunities to all legally qualified candidates where a television celebrity is "an open and notorious supporter" of one candidate and has appeared frequently on newscasts in which the election was discussed. We note that since you do not allege that a candidate personally appeared, the equal opportunities provision of Section 315 is not applicable. The fairness doctrine does not require the result you reach and has never been so administered. It relates to the discussion of issues. Thus, in our 1970 ruling, *Letter to Nicholas Zapple*, 23 F.C.C. 2d 707, the Commission held that when a licensee gives or sells time to supporters of or spokesmen for a candidate during an election campaign who either urge the candidate's election, discuss the campaign issues, or criticize an opponent, the licensee must give or sell comparable time, as the case may be, to the spokesmen for an opponent. *Zapple* held that the licensee is not obligated to provide free time to respond to supporters of a candidate if the supporters of the opposing candidate purchased time. The *Zapple* ruling of course dealt with the discussion of campaign issues. We do not believe that the requirements of fariness support your proposed new policy of requiring equal time whenever a "celebrity" who has publicly supported a candidate frequently appears on newscasts.

We note in this connection that you do not allege that Mr. Rivera introduced himself as a McGovern supporter or advocated the election of McGovern during his broadcasts. The mere on-camera appearance of a celebrity, who has become associated with a candidate in his off camera activities does not of itself raise fairness obligations. Thus, your claim that Mr. Rivera's appearances raised quasi-equal time obligations must be denied.

For the reasons set forth above, no further action is warranted on your complaints.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief*,
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ARTHUR K. SNYDER, COUNCILMAN, CITY OF LOS ANGELES
Concerning Fairness Doctrine Re Station KNX

JANUARY 30, 1973.

Mr. ARTHUR K. SNYDER,
Councilman, City Council of the City of Los Angeles, City Hall, Los Angeles, Calif.

DEAR MR. SNYDER: This will refer to your letter of complaint, dated October 27, 1972, and received in this office on November 3, 1972 alleging that Radio Station KNX, Los Angeles, California, has failed to comply with the rules and policies of the Commission applicable to the broadcast of political editorials.

You have submitted transcripts of two editorials which were broadcast by Station KNX on October 14 and 22, 1972. The October 14 editorial presented the following remarks:

Last Tuesday eight Los Angeles Councilmen moved a step closer to selling out to the oil hustlers. Those eight voted to let Occidental Oil start drilling in the Pacific Palisades.

KNX has opposed this for years and we want to re-cap our reasons for our opposition to Pacific Palisades drilling. One, the majority of residents in the area are against such drilling. In a democracy, that should be enough. Two, the area is geologically unsafe. This is where houses slip off the cliffs. Where landslides close the highway and have killed at least one person already. This is emphasized by a $300,000 city study made in 1957. That underscored the long history of earth instability. Further, a City Geological Hazards Committee of distinguished scientists said the Pacific Palisades are, ". . . a potential geological hazard that, in our opinion, present an imminent and immediately impending threat to life and property." Both are city studies and both are being ignored by councilmen who put private profit over public safety. These councilmen are: Don Lorenzen, Louis Nowell, John Ferraro, Billy Mills, Gilbert Lindsay, Robert Wilkinson, John Gibson, and Art Snyder.

But, this isn't the end of it. KNX opposes this project because we believe a secret and illegal deal was made between City Hall and Occidental Petroleum.

The October 22 editorial stated the following:

Well, the City Fathers sold out to the oil hustler friends of Sam Yorty.

City Councilmen voted to let Occidental Oil drill in geologically unsafe Pacific Palisades. Ignoring the city's geology reports and overwhelming public opposition these councilmen gave Occidental its way.

The surprise vote that made this possible came the week before on the first reading of the ordinance from Arthur Snyder. Here's a man planning to run for mayor or supervisor who seeks public support and plays the environmentalist. His vote to sacrifice the Palisades on the altar of Occidental's profit was unexpected. That is, it was unexpected unless you know who supports him financially.

Listed on his 1971 Dinner Campaign Committee are Mrs. Bonnie Riedel and Mr. and Mrs. Harold Morton. Mrs. Riedel was a planning commissioner when the Occidental deal was getting started. Last week she showed up at City Council as a paid spokeswoman for—guess who? Occidental Oil.

The Mortons have had long-time connections in the oil industry. Mrs. Morton has been a Recreation and Park Commissioner for years and that's the other department involved in this outrageous flim-flam.

Others who serve on Art's campaign committees include Planning Commissioners Stan Diller and David Moir; and Recreation and Park Commissioner James Madrid. In addition, one of Art's biggest contributors is oil man Henry Salvatore.

So, we can see who Art Snyder's friends are. As KNX views it, they are clearly not the people of Los Angeles.

You have also submitted copies of letters from the Editorial Director of Station KNX which you received within a week of the broadcast of each editorial and which included a transcript of the respective editorial and an offer of time for you to tape and present a reply over the station's facilities.

In particular, your complaint states four objections to the editorials in question. First, the station did not contact you in advance of the broadcast of the editorials to ascertain "the truth or falsity" of the factual statements contained therein. Second, the editorials were broadcast before you were informed of their content and offered an opportunity for response thereby making it impossible for you to prepare and present an effective and "timely" reply. Third, "the editorials were extremely inaccurate, and state as fact matters which are not true." And fourth, the editorials were "clearly and purposely slanted so as to cast doubt upon my honesty and integrity, when there is absolutely no reason for any suspicion of misdoing on my part."

You have asked the Commission to review this matter and to take whatever action appears appropriate.

Under Section 73.123(a) of the Commission's Rules and Regulations, if, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the station licensee must, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities. Assuming *arguendo* that the editorials in question contained personal attacks upon you within the meaning of this rule, it would appear from the copies of correspondence which you have submitted that the station has complied with the obligations attending such broadcasts. In particular, you were notified of the editorials within one week of their broadcast and given transcript of their content, and you were offered an opportunity to tape and present a reply over the station. Upon these facts, no violation of Commission rule or policy is evident. It should be noted in this regard that except for editorials endorsing or opposing candidates for public office which are broadcast within 72 hours prior to the day of election, there is no requirement that subjects of editorials be notified in advance of broadcast.

With respect to your allegations that the editorials in question contained statements which were "extremely inaccurate" and evidenced

the station's deliberate disregard as to their "truth or falsity", it is the position of the Commission that it would be inappropriate for this agency to review and determine the "truth" of every factual situation, to evaluate the degree to which the matter complained of departed from that "truth", and, finally, to call upon the licensee to explain any discrepancy. Rather than determining the truth or falsity of broadcast statements, the Commission, in formulating and enforcing the fairness doctrine, deems it more appropriate to assure that whenever one side of a controversial issue of public importance is presented the licensee will afford a reasonable opportunity for the presentation of contrasting views. Neither the fairness doctrine nor any other rule or policy of the Commission proscribes the broadcast of a one-sided editorial. Moreover, the Commission has always encouraged robust wide-open debate and this may include editorials which appear to be unfair or distorted. What is required is that the other side be afforded opportunity to present its viewpoint. See *Letter to Mrs. J. R. Paul*, 26 F.C.C. 2d 591 (1969), a copy of which is enclosed. In offering you opportunities to reply to the editorials in question, it would appear that the station has sought to comply with its fairness obligations.

In view of the foregoing no further Commission action is warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
UTILITY CONSUMERS COUNCIL OF MISSOURI, ST. LOUIS, Mo.
Concerning Fairness Doctrine Re Stations KSD and KTVI

FEBRUARY 5, 1973.

ALBERTA SLAVIN,
President, Utility Consumers Council of Missouri, 631 East Polo Drive, St. Louis, Mo.

DEAR MRS. SLAVIN: This refers to your letter of August 25, 1972 concerning your fairness doctrine complaints against Television Stations KSD and KTVI, St. Louis, Missouri. Because the staff was for many months swamped with complaints and inquiries related to the 1972 primaries, conventions and general elections, which would have become moot unless they were resolved at once, it was necessary to postpone consideration of many other complaints, and we are only now able to respond to some which we normally would have dealt with much earlier.

You contend that the above stations are selling air time to Union Electric Company of Missouri for editorial advertising regarding its request for a rate increase pending before the Public Service Commission of Missouri and that the stations are failing to make reasonably appropriate means available to your organization "to correct the misleading assertions of such advertising." You state that "the Union Electric advertising is propagandistic in that it is a one-sided 'hard sell' for higher rates"; that "such advertising cannot be effectively countered by the interview of a person opposed, since the role of the interviewer (and properly so) is to seek public enlightenment through the cross-examination technique"; that your organization considers "such direct attempts to favorably mold public opinion on a matter of direct and immediately public concern a more pressing situation for the application of the 'Fairness Doctrine' than the more subtle attempts through product advertising"; and that there is also the problem of the repetitive nature of the advertisements. You further state that your organization has prepared a 60-second animated tape giving the opposing view of this public issue and has requested all stations that have aired and continue to air the Union Electric Company advertisements in question to grant air time in appropriate frequency for the running of the counter message. You state that Television Station KPLR, St. Louis, Missouri, has granted your request while KSD–TV and KTVI–TV have refused to do so. You

further state that two of the Union Electric commercials aired on KPLR–TV are as follows:

(1) The St. Louis area . . . a revitalized community in brick, steel and spirit . . . growing, dynamic, attracting new industries and new people . . . all creating greater demands for electricity . . . so great, that the demand on the Union Electric system will double in the next ten years. To keep pace, Union Electric must spend one billion dollars in the next five years alone to expand its facilities. We must raise huge amounts of capital from people in all walks of life to build those facilities, and before they will invest their money with us, they must be assured of a fair return. Our electric rates must cover the cost of keeping our air and water clean, higher fuel costs, higher wages, and taxes, and the rates must provide sufficient return to attract new money, so Union Electric needs higher rates to meet the electric power demands of this dynamic area.

(2) St. Louis—from fur trading posts, bustling river town—to modern metropolis . . . and still growing . . . with electric energy providing an ever-improving standard of living for all people. As this dynamic and diversified area continues to grow, its needs for electricity will double by 1980. Union Electric must spend one billion dollars to keep pace with that growth—one billion dollars in the next five years alone for additional facilities to supply more and more clean, efficient electric energy. One billion dollars is a lot of money. In order to raise money at the lowest possible cost, Union Electric must be a financially sound company. That's why the company is seeking an increase in its rates. Union Electric—planning ahead and working ahead to provide this area with the abundance of electric power it will need for future growth and prosperity.

You request that the Commission rule that KSD–TV and KTVI–TV must air your organization's 60-second tape at such times and with such frequency as will satisfy the requirements of the fairness doctrine.

Your letter of August 25th enclosed a copy of a letter to you, dated May 10, 1972, from Mr. Harold Grams, Vice-President, Broadcasting, The Pulitzer Publishing Company, licensee of Station KSD–TV, which stated "In addition to news coverage of the opposition to Union Electric's request for a rate increase, we are also making time available for discussion of the issue by interested organizations who are opposing the rate increase. We have scheduled an appearance on KSD–TV by a representative of ACTION. Your organization has also been offered an opportunity to appear on KSD–TV and express opposition to the Union Electric rate increase. Keith Gunther, who is receiving a copy of this letter, is prepared to schedule an interview by a representative of your organization as soon as he is contacted by letter or phone." Also enclosed with your letter of August 25th was a copy of a letter to you, dated April 20, 1972, from Mr. Vic Skaggs, Program Manager, KTVI–TV, which stated "we would be pleased to offer one of our public service programs such as 'Perception' for the purpose of expressing your views concerning the rate increase requested by Union Electric."

The fairness doctrine provides that if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. The fairness doctrine does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular

person or group is entitled to appear on the station, since it is the right of the public to be informed, which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith.

In regard to editorial advertising, the Commission in its *Letter to Business Executives' Move for Vietnam Peace*, 25 F.C.C. 2d 242 (1970), ruled that stations were not obligated to sell time to the group, Business Executives' Move for Vietnam Peace (BEM), to present paid commercial announcements against the United States' policy in Vietnam. That decision was appealed and the Court of Appeals reversed the Commission's ruling in *Business Executives' Move for Vietnam Peace* v. *F.C.C.*, —— U.S. App. D.C. ——, 450 F. 2d 642 (1971). The Commission appealed to the Supreme Court and on February 28, 1972, the Supreme Court granted certiorari and also stayed the mandate of the Court of Appeals. Thus, the Court of Appeals' decision voiding a flat ban of paid public issue announcements is in abeyance at the present time pending a Supreme Court decision.

For your further information, the general subject of counter-advertising is now under consideration by the Commission in its comprehensive review of the fairness doctrine.

In view of the fact that both KSD–TV and KTVI–TV have offered your organization broadcast time to present contrasting views to those presented in the Union Electric Company of Missouri advertisements, and the absence of any showing of such disparity in the presentation of contrasting views on the continuing issue which would warrant further inquiry, it does not appear that Commission action is warranted at the present time.

Enclosed for your further information is a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance." If you have specific information that any licensee in its overall programming has failed to comply with the fairness doctrine, let us know and we will give this matter further consideration. (See page 10416 of the enclosed Public Notice regarding the filing of fairness doctrine complaints.)

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaints. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief*,
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73–158

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS. (HAMPTON, PELLA, CEDAR RAPIDS, AND CHARLES CITY, IOWA; KEYSER, W. VA.; CRYSTAL RIVER AND GAINESVILLE, FLA.).	Docket No. 19401, RM–1750, RM–1756, RM–1757, RM–1777, RM–1790, RM–1829

SECOND REPORT AND ORDER

(Adopted February 7, 1973; Released February 12, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. The Commission has under further consideration the Notice of Proposed Rule Making (37 Fed. Reg. 1067), and the Further Notice of Proposed Rule Making (37 Fed. Reg. 3548), concerning the amendment of Section 73.202(b) of the Commission's Rules, the Table of FM Assignments. The Report and Order (35 F.C.C. 2d 535 (1972)) gave consideration only to the proposal for substitution of a channel at Keyser, West Virginia (RM–1756).

2. This Second Report and Order deals with the remaining five proposals for assignment of FM channels in the states of Florida and Iowa, plus a conflicting proposal submitted as a result of the Notice. Briefly, the proposals to assign or to exchange channels at the following communities are adopted: Charles City, Hampton and Pella, Iowa; Crystal City and Gainesville, Florida. The detailed consideration of the proposals are set forth below.

3. *Hampton, Pella, Cedar Rapids and Charles City, Iowa (RM–1750 and RM–1829).* The rule making here was instituted as a result of the petitions filed by Obed S. Borgen (RM–1750) and Dwaine F. Meyer (RM–1829). Because of short spacings Borgen's request for assignment of Channel 276A to Hampton, Iowa, required either a substitution of Channel 276A for Channel 275 at Cedar Rapids, Iowa, or a limitation to the use of Channel 275 to a site eight to ten miles south or east of the community. However, substitution of Channel 276A at Cedar Rapids conflicted with the proposal for assignment of Channel 277 at Pella, Iowa, filed by Meyer, because of short spacing. The Notice gave consideration to the various solutions of conflicting requests and invited comments to explore the possibility of making the assignments as follows:

City	Channel No.	
	Present	Proposed
Charles City, Iowa	285A	240A
Hampton, Iowa		285A
Pella, Iowa		277 or 292A

Comments in support of the proposals were submitted by the two petitioners, and comments in opposition were filed by Radio, Incorporated, licensee of Station KCHA–FM, Charles City, Iowa.

4. To circumvent the necessity of changing the assignment or placing a restriction on the use of the channel at Cedar Rapids, the proposed assignment above would require a substitution of Channel 240A for Channel 285A at Charles City, Iowa, which is licensed to Station KCHA–FM, and Channel 285A would be assigned to Hampton, Iowa. This would also allow for assignment of Channel 277 to Pella, Iowa. As to Pella, there was a question, due to insufficient population data, whether a Class C channel should be assigned to a community the size of Pella; hence alternative channel assignments were proposed. Mr. Meyer's new showing in response to the Notice of Proposed Rule Making indicates that a Class C station at Pella would provide a first FM service to 76 square miles with 1,276 population, whereas a Class A station would not provide such service, and a second FM service to 433 square miles with a population of 22,936, while a Class A station would provide a second service to 57 square miles with 1,114 population.

5. Radio Incorporated, licensee of Station KCHA–FM, contends that the proposed change in the channel assignment at Charles City is confiscatory by reason of great expense required to make the change of channels and objects to the proposed amendment of Section 73.202 (b) of the Rules. The grounds for the objection are that it has expended time and money promoting the frequency; expenditure of more money for advertising and promoting the new frequency; and that there would be loss of listenership and revenue and would require the expenditure of more money for advertising and promoting the new frequency; and that Channel 240A might be expected to present a second harmonic interference problem on Channel 9 television and within the listenership of KCHA–FM. Radio Incorporated states that should the Commission rule that the proposed amendment is in the public convenience, interest or necessity, the burden of expense upon KCHA–FM would be confiscatory, and lists 11 items of expenses which it believes would be necessitated by the change of frequency: legal, filing and consulting engineering fees; costs of labor, new antenna system, new transmitter or changes in existing transmitter, new monitoring equipment or changes in present monitoring equipment, replacement of office materials, postage, telephone expense; loss of revenue during silent time and damages for loss of listenership on established frequency. In addition, it asserts that inconvenience and the nuisance to the licensee would be considerable and creates a damage for which the licensee should be compensated, and contends that the total cost to KCHA–FM, in the event the change is ordered, would exceed $12,500.

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6. We have carefully considered the proposals and the opposition filed thereto and conclude that it would be in the public interest to assign Channel 285A to Hampton, Iowa, and Channel 277 to Pella, Iowa. Channel 285A at Charles City, Iowa, would be changed to Channel 240A. The assignment to Hampton would provide for a first local broadcast facility to the community and Franklin County in which it is located. A Class C station at Pella would also provide for a first local broadcast facility with a coverage providing for a first and second FM service to substantial portions of the outlying area. The two petitioners have stated that they are willing to reimburse Station KCHA–FM the pro rata share of the reasonable cost that would be incurred in the change of assignment, and that they will make applications for the use of the channels and construct the stations, if authorized.

7. One of the objections raised by Radio Incorporated is the possibility of second harmonic interference to the television reception in the Charles City area. The TV Factbook indicates that Floyd County, wherein Charles City is located, is in the reception area of Station KCRG–TV, Channel 9, Cedar Rapids, Iowa. Since the second harmonic of Channel 240A (191.8 mHz) falls slightly above the aural carrier of Station KCRG–TV, the second harmonic interference to the television reception could occur. However, this matter has been presented in a number of cases in the past, and the Commission has indicated its view that it is a matter which can be corrected, and is not a consideration warranting a limitation on making FM assignments. See Information Bulletin FCC 65–130 (February 19, 1965) and Public Notices "Policy to Govern the Change of FM Channels to Avoid Interference to Television Reception" and "FM Interference to TV Reception", FCC 66–106 (2 F.C.C. 2d 462) and FCC 67–1012, February 2, 1966 and September 1, 1967, respectively. Where we have changed FM assignments on this basis, it has usually been in areas where FM channels are plentiful, which is not the case here. In this regard, Radio Incorporated has suggested that Channel 240A could be assigned to Hampton instead. However it overlooks the assignment of Channel 240A at Webster City, Iowa, some 38 miles from Hampton; the required separation is 65 miles.

8. Since the action taken here will require a change in the operating frequency of Station KCHA–FM, the station should be reimbursed by the benefiting parties (the permittees for Hampton Channel 285A and for Pella Channel 277) for the reasonable costs of the channel change. Mr. Borgen asserts that the cost of modification is estimated to be approximately $1,090. However, Radio Incorporated believes that it should be compensated in the excess of $12,500, but it did not substantiate the estimate. We leave the matter of determining the appropriate costs to the interested parties, subject to Commission approval in case of dispute. We have on previous occasions delineated the guidelines setting forth the items which may be the subject of reimbursement. See *Second Report and Order, Docket No. 16662 (Circleville, Ohio)*, 8 F.C.C. 2d 159 (1967). We expect that parties eventually involved will attempt in good faith to reach agreement on what constitutes a reasonable settlement.

9. Since the change is in the public interest, the licensee of Station KCHA–FM shall file its February 1, 1974, renewal application specifying operation on Channel 240A rather than 285A. *Transcontinent Television Corp.* v. *FCC*, 113 U.S. App. D.C. 384, 308 F. 2d 339, 23 Pike & Fischer, R.R. 2064, (1962); *Second Report and Order, Docket No. 18051 (Rockford, Ill.)*, 17 F.C.C. 2d 947 (1969). The station may continue to operate on Channel 285A until February 1, 1974, or until such earlier time as upon its request, the Commission authorizes interim operation under special operating authority on Channel 240A, following which it shall submit (within 30 days) the measurement data normally required of an applicant for an FM broadcast station license. On and after the date of which such interim operation is authorized to commence, the Commission will view the request of Station KCHA–FM as a relinquishment of Channel 285A and waiver of any rights it may possess with regard to that channel. Channel 285A will be assigned to Hampton on February 1, 1974, or such earlier date as the Commission authorizes interim operation on Channel 240A to Station KCHA–FM as mentioned above.

10. *Crystal River and Gainesville, Florida (RM–1757, RM–1777 and RM–1790)*. This rule making was instituted on the basis of the conflicting petitions filed by George N. Manthos for assignment of Channel 253 to Crystal River, Florida, and that for assignment of the same channel to Gainesville filed by Capitol City Broadcasting, Incorporated (which later withdrew from further participation in this proceeding). There was also a petition for assignment of Channel 265A to Gainesville filed by James M. Hansford and Frank J. Terrell.[1] To examine the problem further, the Notice and Further Notice herein tentatively proposed assignment of Channel 253 to either Crystal River or Gainesville, Florida, and an assignment of a Class A channel to each community as an alternative channel, Channels 237A and 265A respectively. The Notice requested submission of additional information to aid us in making a final determination (see para. 12, *infra.*). Comments and reply comments were filed by George N. Manthos (Manthos), H. Bent Kelly (Kelly), Good News Broadcasting Company (Good News), James M. Hansford and Frank J. Terrell (Hansford), Jacksonville Broadcasting Company (JBC), Fort Pierce Broadcasting Company (FPBC), and Tri-County Broadcasters, Inc. (Tri-County).

11. The comments by Good News, Kelly and Hansford support the assignment of Channel 253 to Gainesville, and those of Manthos, the assignment of Channel 253 to Crystal River. Hansford also states that, if a Class A channel were to be assigned to Gainesville, it will file an application for the use of the channel. Tri-County urges the assignment of Channel 253 to Dunnellon in exchange for its present Channel 272A,[2] returning the channel to Ocala where it is nominally assigned, and the assignment of Class A channels to Gainesville and Crystal River. JBC urges denial of the requests for the assignment of Channel 253 to Gainesville and Crystal River because of its intention

[1] At the time the petition was filed Mr. Hansford and Mr. Terrell were a partnership. Later, together with a third party, they incorporated under the name of Far More Media, Inc.

[2] Tri-County is the licensee of Stations WTRS and WTRS–FM (operating on Channel 272A) at Dunnellon.

to file a petition for assignment of Channel 254 to Tampa, Florida, and asserts that Class A channels would provide adequate service to both communities.[3] FPBC opposes the JBC comments.

12. In view of the complexity of the problem, the Notice stated that additional information was needed concerning the areas and populations that are presently unserved and underserved within the 1 mv/m contours of proponents' Class C FM stations, if authorized, compared to a Class A station's operating with a maximum facility. Manthos, Good News and Tri-County made their showings for Class C stations operating with 75 kw and 500-foot facilities. Kelly's showing was based on a 100 kw and 1000-foot facility. Although the information submitted does not lend itself to an exact comparison, it appears that, on the basis of equal facilities (75 kw/500 ft), a Class C station at Gainesville would provide a new service to a population twice that which would receive a new FM service from a station at either Crystal River or Dunnellon (approximately 200,000 to 100,000). However, as to providing a first FM service, a station at either Crystal River or Dunnellon would provide a first service to a larger number of people than would a Gainesville station (17,700 or 15,000 compared to 85 persons). Because of insufficient information, no comparison can be made as to second service. In comparing the above Crystal River and Dunnellon stations to a Gainesville station operating with a 100 kw and 1000-foot facility, a Gainesville station would provide a new FM service to a population two and one-half to three times that which would receive such a service from a station located either at Crystal River or Dunnellon (272,000 to 95,000 or 110,000), but it would only provide a first FM service to one-half as many (7,750 compared to 17,750 or 15,000). However, as to a second service, it would provide such service to four times as many persons as a Dunnellon station (22,000 to 5,000). (No data were submitted on Crystal River.) As to Class A stations, a Gainesville station would provide a new FM service to some 90,000 population, while a Crystal River station would provide such service to about 15,000 persons. Although a Gainesville station would not provide a first service, a Crystal River station would provide such service to approximately 4,300 persons. (Since the Dunnellon Class C station would be a replacement for its present Class A station, no information is furnished as to Class A operation.)

13. We have given careful consideration to the various contentions presented by the proponents urging the assignment of Channel 253 to their respective communities. Although there may be merit in them, we are guided by our FM allocation principles which set forth the priorities by which the FM channels are assigned to communities. The priorities are (a) to provide for first FM service to as much of the population of the United States as possible; (b) to provide each community with at least one FM broadcast station; (c) to provide a choice of at least two FM services to as much of the population of the United States; etc. It thus appears that the public interest would best be served if Channel 253 were assigned to Crystal River. A Class C

[3] Since the JBC petition for Tampa (RM-1962) was filed April 19, 1972, 12 days after the date for filing comments, no consideration will be given to the petition in the proceeding herein in accordance with the "cutoff" procedure.

station at Crystal River, operating with a facility of at least 75 kw and antenna height of 500 feet above average terrain, would provide a first FM service to the largest number of people as well as provide for a first local broadcast station to the community. Although a Class C station with a similar facility at Dunnellon would provide a first FM service to population nearly as great as that of a station at Crystal River, the proponent is seeking to improve its present Class A facility with a Class C facility, *i.e.*, it would not provide for a first local FM station. Dunnellon also has a local standard broadcast station whereas Crystal River has none. The assignment of Channel 265A to Gainesville would provide for a third FM station to the community. The fact that there is already intermixture in the community lessens our concern on this score. We will therefore make these channel assignments.

14. The authority for the actions taken herein is contained in Sections 4(i), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended.

15. Accordingly, IT IS ORDERED, That effective March 21, 1973, the Table of FM Assignments (Section 73.202(b) of the Rules) IS AMENDED with respect to the cities listed below to read as follows:

City:	*Channel No.*
Crystal River, Fla	[1] 253
Gainesville, Fla	265A, 279, 288A
Charles City, Iowa	[2] 240A
Hampton, Iowa	[2] 285A
Pella, Iowa	277

[1] Any application for this channel must specify an effective radiated power of 75 kw and antenna height of 500 feet above average terrain or equivalent.

[2] Effective 3 a.m. central standard time, February 1, 1974 (concurrently with expiration of the outstanding license for Station KCHA–FM on Channel 285A at Charles City, Ia.), or such earlier date as Station KCHA–FM may, upon its request, cease operation on Channel 285A at Charles City, Ia.

16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

39 F.C.C. 2d

F.C.C. 73R-70

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of FRIENDLY BROADCASTING CO. For Renewal of License of Radio Stations WJMO and WLYT (FM), Cleveland Heights, Ohio	Docket No. 19412 File No. BR-1844 File No. BRH-140

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 9, 1973)

BY THE REVIEW BOARD.

1. Before the Review Board for consideration is a petition to enlarge issues, filed December 26, 1972, by the Broadcast Bureau.[1] The following issues are requested by the Bureau:

(a) To determine whether Friendly Broadcasting Co. broadcast information on a lottery in violation of 18 U.S. Code, Section 1304, and Section 73.122 of the Commission Rules.[2]

(b) To determine whether station WJMO broadcast programs and/or announcements which aided or gave comfort to illegal gambling activities.

(c) To determine in light of the evidence adduced under Issue A, B & C. whether Friendly Broadcasting Company possess the requisite qualifications to be a Commission licensee. [sic]

(d) To determine whether Friendly Broadcasting Co. has been lacking in candor or made misrepresentations in responding to the Commission's Official Notices of Violations.

2. In support of its claim that good cause exists for the late filing of its petition, the Bureau submits that it did not possess knowledge of facts warranting the requested issues until they were revealed at hearing. Furthermore, claims the Bureau, its petition was filed eight days after receipt of the full text of the transcript of the hearing. The Review Board finds that good cause exists for the Bureau's submission of its petition at this time and will therefore consider the petition on its merits.

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[1] No pleadings have been filed in response to the Bureau's petition.

[2] 18 USC § 1304 reads:

Whoever broadcasts by means of any radio station for which a license is required by any law of the United States, or whoever, operating such station, knowingly permits the broadcasting of, any advertising of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than $1,000 or imprisoned not more than one year, or both. Each day's broadcasting shall constitute a separate offense.

Section 73.122(a) of the Commission's Rules reads:

An application for construction permit, license, renewal of license, or any other authorization for the operation of a broadcast station, will not be granted where the applicant proposes to follow or continue to follow a policy or practice of broadcasting or permitting 'the broadcasting of any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.' (See 18 USC § 1304.)

3. In support of requested issues (a), (b) and (c), the Bureau alleges that eight witnesses testified [3] at hearing that between 1967 and 1971 Station WJMO [4] broadcast programs featuring faith healers, blessers and ministers, which contained information designed to promote the business of the "numbers game", an illegal lottery in Cleveland. Petitioner further asserts that four witnesses testified that the past and present management of WJMO was aware of and, in fact, condoned the programming in question. In addition, contends the Bureau, three of those four witnesses and two other witnesses, including the station's present general manager, testified that WJMO broadcast information relating to numbers operations during the course of stock market reports. In support of its requested issue (d), petitioner refers to allegedly uncontroverted testimony which establishes, the Bureau asserts, that Friendly made misrepresentations in its responses to the Commission's Official Notices of Violations. In response to those Notices, the applicant submitted affidavits purportedly of staff members of WJMO in which the affiants stated that they had been responsible for certain violations of the Commission's Rules and that his operating duties had been reviewed with him. The Bureau maintains that testimony at hearing indicates that the documents submitted by WJMO to the Commission purporting to be affidavits were not in fact affidavits, since they were not properly sworn. Moreover, states the petitioner, the statements contained in the documents were in themselves misrepresentations, in that some operators did not believe they committed the violations, that operating duties had not been reviewed and that the employees signed the statements only in order to retain their jobs.

4. The Review Board is of the view that the Broadcast Bureau's unopposed allegations reflect a fair analysis and evaluation of the testimony adduced in these proceedings. In *United Television Co., Inc.* (*WFAN-TV*), 20 FCC 2d 278, 17 RR 2d 738 (1969),[5] we concluded in analogous circumstances that such allegations raise a serious question concerning possible violations of Section 1304 of Title 18 and Section 73.122 of the Commission's Rules, and that appropriate issues should be specified to inquire into these matters and to determine the effect thereof on the qualifications of the applicant. On the other hand, as we stated in *United*, "since the requested issues [(a), (b) and (c)] are essentially founded on alleged violations of Section 1304 of Title 18 and Section 73.122 of the Rules, we will refrain from specifying any issues other than those that pertain to possible violations of those applicable statutory and administrative provisions" (footnote omitted). 20 FCC 2d at 285, 17 RR 2d at 748. We further find that the Bureau has raised a substantial, uncontested question of misrepresentation to the Commission by the applicant. We will therefore add that requested issue.

5. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed December 26, 1972, by the Broadcast Bureau IS GRANTED

[3] The Bureau also asserts that their testimony was uncontroverted.
[4] WJMO is the standard broadcast facility of Friendly Broadcasting Company (Friendly), the renewal applicant in this proceeding.
[5] The applicant against which issues were added in that case is a corporation wholly owned by the 100% owner of Friendly.

to the extent indicated below, and IS DENIED in all other respects; and

6. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED by the addition of the following issues:

(a) To determine whether Station WJMO has broadcast announcements or information concerning a lottery in contravention of Section 1304 of Title 18 of the United States Code, and of Section 73.122 of the Commission's Rules; and, if so, to determine the effect thereof upon the qualifications of the applicant to be a broadcast licensee.

(b) To determine whether Friendly Broadcasting Company has made misrepresentations to the Commission and, if so, the effect thereof on the qualifications of the applicant to be a broadcast licensee; and

7. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the above issues SHALL BE upon the Broadcast Bureau, and the burden of proof SHALL BE upon Friendly Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–160

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
MR. KILSOO HAAN
Against
KGO, SAN FRANCISCO, CALIF.

ORDER

(Adopted February 7, 1973; Released February 9, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. The Commission has before it an Application for Review filed on November 27, 1972 by Mr. Kilsoo Haan of the ruling of the Broadcast Bureau of October 19, 1972.

2. We have examined the pleadings herein and believe that the Bureau's ruling was correct. Accordingly, pursuant to Section 1.115(g) of the Commission's Rules and Regulations, the Application for Review is DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-60

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
IMPOUNDMENT OF PROFITS OF STATION WLBT (TV), JACKSON, MISS.

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 24, 1973)

BY THE COMMISSION: COMMISSIONERS REID, WILEY AND HOOKS NOT PARTICIPATING.

1. On April 6, 1972, the United States Court of Appeals for the District of Columbia Circuit handed down its decision in *Civic Communications Corporation* v. *Federal Communications Commission*, 462 F 2d. 309, ——— U.S. App. D.C. ———, 24 RR 2d 2015, modifying the Commission's order in *In re Lamar Life Broadcasting Co.*, 21 FCC 2d 277, 18 RR 2d 274, released February 2, 1970, and remanding the cause to the Commission for consideration of the issue of whether the net profits of Lamar Life Broadcasting Co., resulting from operation of station WLBT(TV), Jackson, Mississippi, from September 8, 1970 to April 17, 1971, should have been impounded. A brief review of the background of this matter is essential to an understanding of the Commission's task in this proceeding.

2. On December 5, 1969, the Commission released an order vacating the grant of the application (BRCT-326) of Lamar Life Broadcasting Company (Lamar) for renewal of the license of station WLBT (TV), channel 3, Jackson, Mississippi, requested an application from Lamar for a construction permit, and invited competing applications. *Lamar Broadcasting Co. (WLBT(TV))*, 20 FCC 2d 635. Lamar was authorized to remain on the air pending establishment of an interim operation. On December 10, 1969, Civic Communications Corporation (Civic), an applicant (BPCT-4305) for regular authority to operate station WLBT(TV), filed a petition requesting that the Commission impound the profits of station WLBT(TV) from December 5, 1969, the date the Commission vacated its grant to Lamar and invited competing applications. By Memorandum Opinion and Order (21 FCC 2d 277, 18 RR 2d 274), the Commission, on January 29, 1970 (released February 2, 1970), denied Civic's request to impound profits, explaining that there was little likelihood of any detriment to Civic or any other applicant nor any advantage to Lamar in permitting Lamar to retain the profits for the short period until an interim operation was established. It is from this order that Civic appealed to the Court of Appeals, whose decision is now before us for implementation.

3. On September 8, 1970, the Commission released an order (adopted September 3, 1970, 26 FCC 2d 100, 20 RR 2d 167), granting the appli-

cation (BPCTI–11) of Communications Improvement, Inc. (CII), for interim authority to operate station WLBT(TV) and simultaneously terminating Lamar's operating authority. We there provide for distribution by the interim operator (which is not an applicant for regular authority) of the net profits from the operation to nonprofit educational broadcasting in Mississippi. On September 16, 1970, the Commission released a Memorandum Opinion and Order (adopted September 15, 1970, 25 FCC 2d 619), providing that if Lamar sought a stay from the Court of Appeals within seven days of the date of release of the order, the Commission's action of September 3, 1970, *supra*, would be stayed until 30 days after the Court acted upon Lamar's motion. Lamar filed a motion for stay with the Court of Appeals on September 23, 1970, and simultaneously requested an immediate decision on the merits from the Court. During the pendency of the motion for stay and for immediate decision on the merits before the Court, Lamar continued to operate station WLBT(TV). The Court did not act until March 17, 1971, when it affirmed the order of the Commission on the merits and dismissed Lamar's motion for stay as moot. Under the Commission's order, released September 16, 1970, *supra*, the effectiveness of the termination of Lamar's operating authority was stayed for 30 days after March 17, 1971 (the day the Court acted); i.e., April 17, 1971. CII, however, was not ready to assume operation of the station on that date and, on May 19, 1971, the Commission adopted an order, released May 21, 1971 (*Communications Improvement, Inc.*, 29 FCC 2d 468, 21 RR 2d 1178), permitting Lamar to continue operation of the station until CII was able to take over the operation, but the Commission ordered the net profits of the station impounded from April 17, 1971, to be distributed by CII in accordance with the latter's undertaking. On June 14, 1971, CII assumed interim operation of station WLBT(TV).

4. In its appeal, Civic and CII suggested to the Court that the profits should have been impounded from (1) June 20, 1969 (the date the Court reversed the Commission's order granting Lamar a regular three-year renewal), or (2) September 5, 1969 (the date the Court denied rehearing), or (3) December 5, 1969 (the date the Commission vacated its grant to Lamar, pursuant to the Court's mandate, and invited competing applications). The Court of Appeals, in the decision which is before us for implementation, considered three possible periods during which it thought that the net profits perhaps should have been impounded. These periods were: December 5, 1969–September 8, 1970 (the period during which Lamar remained on the air until the Commission granted interim authority to CII); September 8, 1970–April 17, 1971 (the period during which Lamar operated the station after interim authority was granted to CII, pending a decision on Lamar's appeal, to the end of the 30-day stay period allowed by the Commission following action by the Court); and April 17, 1971–June 14, 1971 (the period during which Lamar operated after dissolution of the Commission's stay because CII was not able to assume operation until the date CII actually took over). The Court observed that profits for the last period were, in fact, ordered impounded, and upheld the Commission's refusal to impound during the first period. The

Court, however, vacated the Commission's order as to the middle period and remanded the case to the Commission for consideration as to whether the net profits from September 8, 1970, to April 17, 1971, should have been impounded. In so doing, the Court held that the reasons assigned by the Commission for denial of all impounding in its February 2, 1970, decision do not necessarily support application of the order to the September 8, 1970 to April 17, 1971 period, because of the length of the period and because it resulted from Lamar's own decision to contest in court the award of interim operating authority to CII.

5. Our major concern, like that of the Court, is that, in the interim operation of station WLBT(TV), no applicant for regular authority should enjoy an unfair advantage over the others, nor should any applicant suffer a disadvantage solely as the result of the interim operation. But for its appeal, Lamar's stewardship of the station would have terminated September 8, 1970, assuming, for the moment, that CII had been in a position to have taken over operation of the station. After that date, Lamar was a licensee in name only, and its operation of the station was in the nature of a trusteeship for CII. Operation by Lamar as a "trustee" for CII was necessary in order to prevent cessation of the operation of the station with the resultant loss of service to the public. Consequently, upon further consideration and in the light of the Court's opinion, we now find that Lamar was entitled, in this period, to recoup its reasonable and legitimate expenses, but has no claim on the net profits. Lamar, it must be remembered, has the status of an applicant for a "new" station, not that of one seeking renewal of a license. Retention of the net profits by Lamar from the date its operating authority as a licensee terminated would give it an unfair advantage over the other applicants. First, it would provide some of the wherewithal to finance Lamar's expenses through the comparative hearing process. We think that it is obvious that, under these circumstances, Lamar would not be competing on equal terms, or terms as nearly equal as can be, with the other applicants, but would have a decided financial edge. Moreover, Lamar should not be allowed as "trustee" to use the profits of the station during the pendency of its appeal to the courts to defray the costs of the appeal. Here, also, the other parties work at a disadvantage. We have concluded, therefore, that, for the reasons stated, Lamar is not entitled to the net profits after September 8, 1970, and these funds must be remitted to CII for distribution. Accordingly, we have come to the conclusion that impoundment for the period in question is in the public interest, anything which we may have decided previously to the contrary notwithstanding. A brief resume of the events antedating this decision is important to an understanding of the problems which arise out of the decision and remain to be resolved.

6. Following the Court's decision, Lamar, on April 25, 1972, requested an opportunity to present to the Commission its views as to the reasonableness and propriety of impounding net profits of station WLBT(TV) during the period from September 8, 1970, through April 17, 1971. This opportunity was granted to Lamar on May 8, 1972, and there followed a sequence of letters and pleadings by Lamar and CII. Four basic pleadings set out the respective positions of the parties: (a)

petition of Lamar upon reconsideration pursuant to court remand, filed June 8, 1972; (b) response of CII, filed July 7, 1972; (c) reply of Lamar to the CII response, filed July 28, 1972; and (d) supplemental response of CII to Lamar's reply, filed August 11, 1972. These pleadings contain the basic positions of the parties with respect to whether or not there should be impoundment and, if so, the basis upon which the amount thereof is to be computed. Briefly stated, there is very little agreement between Lamar and CII. In the following paragraphs, we have set forth the questions which engage the parties with respect to how the net profits to be impounded are to be computed.

7. Lamar states, while insisting that, for many reasons, the net profits for the period in question should not be impounded, if the Commission decides to order impoundment, the net profits for the period should be net profits computed for Federal income tax purposes, subject to the following adjustments:

(a) Less income not attributable to the operation of station WLBT;
(b) Less interest on short-term investments by Lamar;
(c) Less income received from rental of space on the WLBT tower to other;
(d) Less accountant's fees for determination of net profits to be impounded from September 8, 1970, through April 17, 1971;
(e) Less interest on Lamar's average working capital used in the operation of WLBT during the impoundment period, at the legal maximum rate for corporations; i.e., 15%;
(f) Less management fees for operation of WLBT for the benefit of CII and its beneficiaries during the impoundment period; i.e., 10% of gross sales;
(g) Less Federal income tax penalties which Lamar may incur in 1972 as the result of the two-year delay in ordering impoundment;
(h) Less lease rental of $30,000 per month, on the same terms and conditions as contained in the lease agreement between Lamar and CII, dated June 11, 1971;
(i) Plus depreciation, interest and legal fees during the impoundment period, allocable to Lamar's efforts to retain its license;
(j) Plus interest on net profits for the impoundment period from September 8, 1970, through April 17, 1971, at 15%. Lamar states that items (e) and (j) must be allowed or disallowed together, but not either alone.

8. Before discussing the above problems, we point out that there are other areas of dispute, one of which we think it imperative to resolve at the outset. The parties are in disagreement as to whether CII may deduct anything from the money turned over to it by Lamar for such things as repayment of CII's debts or whether CII is a mere conduit through which every cent of the impounded funds pass to the Mississippi educational broadcasting interests. Consistent with CII's specific undertaking [1] to donate "the entire net profits" to nonprofit organizations and our order in *Lamar Life Broadcasting Co.*, 26 FCC 2d 100, 10 RR 2d 167, as well as CII's own arguments to the Court of Appeals, maintaining that the people of Mississippi have "an equitable claim" to the profits, we here hold that CII is a conduit through which the funds are to be distributed to the beneficiaries. CII is, in every sense, a trustee for the beneficiaries and we are not persuaded

[1] *In Communications Improvement, Inc.*, 29 FCC 2d 468, 21 RR 2d 1178, the Commission required that the profits which it ordered to be impounded be deposited in an escrow account and provided that: "Upon the execution of a satisfactory agreement between Lamar and CII, any funds in the escrow account will be turned over to CII *for distribution* in accordance with its representations to us." (Emphasis supplied). CII has represented that it would donate the *entire net profits* to its beneficiaries. See *Lamar Life Broadcasting Co., et al.*, 26 FCC 2d 100, 20 RR 2d 167, par. 18. In its supplemental response in this proceeding, in paragraph 7, CII concedes that it is a mere conduit as to the April 17–June 14 profits. We are not convinced that CII may be treated as a "mere conduit" for one period and not for another.

that, under these circumstances, it is free to divert any part of the impounded funds toward reimbursement for its expenses. There is, however, one exception. We are concerned with the period of time during which Lamar operated the station while its appeal was pending before the court. We think that CII is entitled to retain, out of the monies to be paid over to it by Lamar for this period, its reasonable, prudent and necessary costs incurred by reason of the appeal before the Court of Appeals. This is necessary, we believe, because CII must, in one way or another, recover the costs incurred on behalf of its beneficiaries to protect the rights of those beneficiaries to receive the funds. This is a cost properly chargeable to the beneficiaries because, without CII's defense on appeal, the right to the trust funds might not have been established. We rule, therefore, that these expenses may be deducted by CII from the funds paid over to it by Lamar, but CII may not retain any part of these funds for any other purpose. A determination of the extent, if any, to which CII may use net profits from its operation of station WLBT for purposes such as capital expenditures is beyond the scope of this proceeding.

9. Among the other problems is one relating to disputed insurance claims, arising out of an apparent duplication of insurance coverage when CII assumed operation of station WLBT. The dispute involves an alleged attempt by Lamar to offset against profits an amount for the disputed duplicated insurance premiums. This dispute is not properly before us in this proceeding because the amount in dispute is sought to be charged against profits for the period April 17, 1971, to June 14, 1971, during which period profits have already been ordered impounded and it is not, therefore, for decision here. Moreover, the parties seem to be in accord that, as with any other matter arising under a lease agreement, this is a matter of private law which should be adjudicated, if necessary, by a local court in a civil proceeding and is not for adjudication by the Commission. We, therefore, decline to pass upon this dispute and leave it for resolution by the parties in private litigation if it cannot be otherwise resolved.

10. It is apparent that the parties are at issue on the items described in paragraph 7, *supra*, which are to be considered in connection with the computation of net profits to be paid over to CII in trust for the benefit of Mississippi educational interests. We, therefore, rule on these issues by way of laying down guidelines for the computation, since no specific figures have been furnished.

(a) We allow the deduction of income to Lamar which was not attributable to the operation of station WLBT, but if Lamar has borrowed funds for projects not attributable directly to the operation of WLBT, the amount of interest paid on such loans, if any, which has been charged against gross income of WLBT to arrive at net profit, must be added back into net profits.

(b) We allow the deduction of interest earned on short-term investments by Lamar.

(*c*) We allow the deduction of income received from rental of space on Lamar's tower to others. CII contends that if this is allowed, an unspecified portion of tower expenses should not be allowed in computing net profits. We agree. To the extent that tower expenses have been deducted from gross income to arrive at a net profit figure, a

portion (in an amount to be determined by negotiation between the parties) must be added back to net profits.

(d) We allow the deduction of accountant's fees paid by Lamar for the necessary expenses of determining the amount of net profits which are to be impounded.

(e) We disallow the deduction of interest on Lamar's average working capital during the impoundment period. This is income directly attributable to the operation of station WLBT and, if Lamar insists upon recognition of these funds as being due it, it must pay it over to CII in any event as a part of impoundable net profits.

(f) We disallow the deduction of a management fee for Lamar for the impoundment period. Lamar's officers and management personnel were compensated for whatever functions they performed and this compensation is taken into account in arriving at a net profit figure. Management functions were performed by Lamar, during the pendency of the appeal, for its own benefit with the hope, if not expectation, that it would retain its operating authority.

(g) Although there is question as to whether Federal income tax penalties may accrue as a result of delay in the impoundment, should such penalties actually accrue, we will allow the deduction provided that the penalties are not the result of lack of diligence or earnest pursuit of its rights by Lamar. Lamar, in order to claim the deduction, must prove the penalties accrued despite all of its efforts to prevent such accrual and it must prove the amount thereof.

(h) We allow the deduction of a monthly lease rental on the same terms and conditions as those obtaining under existing lease arrangements between the parties. The amount may be adjusted by agreement of the parties if there is a dispute as to the existing terms and conditions.

(i) We allow the addition of depreciation, interest and legal fees charged by Lamar for the impoundment period allocable to its efforts to retain the license of WLBT.

(j) We disallow the addition of interest on net profits for the impoundment period, for we have disallowed the deduction of interest on average working capital and we believe that it would be inequitable to allow one and not the other.

11. We believe that the foregoing judgments represent a fair evaluation of the method of computing the amount of profits to be made available for the use of the beneficiaries. We do not, however, rule out such adjustments as may be agreed upon by both parties and we, in fact, encourage the parties to effect a settlement by agreement as expeditiously as conditions will permit. A final accounting and report is to be made to the Commission in this matter within ninety (90) days after the date of release of this order.

12. In accordance with the foregoing, IT IS ORDERED, That the net profits of station WLBT, to be computed as indicated herein, ARE IMPOUNDED, from September 8, 1970, through April 17, 1971, and ARE TO BE PAID to Communications Improvement, Inc., IN TRUST and for the benefit of nonprofit educational broadcasting interests of the State of Mississippi.

13. IT IS FURTHER ORDERED, That Communications Improvement, Inc., DISBURSE such funds to the beneficiaries no later than sixty (60) days after receipt of the same from Lamar Life Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-38

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of JEFFERSON PILOT BROADCASTING CO. (WBTV), CHARLOTTE, N.C. For Construction Permit	Docket No. 18880 File No. BPCT-4168

ORDER

(Adopted January 19, 1973; Released February 7, 1973)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER ABSENT.

1. The Review Board having under consideration petition for leave to amend to update application pursuant to Section 1.65 of the Rules, filed on November 3, 1972, by Jefferson Pilot Broadcasting Company;

2. IT APPEARING, That no objections to acceptance of the amendments have been filed within the time allowed therefor;

3. IT IS ORDERED, That the above petition for leave to amend IS GRANTED and the amendment therein IS ACCEPTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

109-027—73——7

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
KOPS-MONAHAN COMMUNICATIONS, INC.,
ASSIGNOR
and
SCOTT BROADCASTING CO. OF PENNSYLVANIA,
INC., ASSIGNEE
For Assignment of License of WTRY,
Troy and WTRY-FM, Albany, N.Y.

DECEMBER 18, 1972.

On December 13, 1972, the Commission approved the above assignment of license with Commissioner Johnson dissenting and issuing the following statement:

OPINION BY COMMISSIONER JOHNSON ON WTRY-AM, WTRY-FM ASSIGNMENT ACTION

On December 13, 1972, the Commission approved the assignment of license of WTRY-AM, Troy, WTRY-FM, Albany, N.Y., from Kops-Monahan Communications, Inc., to Scott Broadcasting Company of Pennsylvania, Inc.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

Today the Federal Communications Commission approves the assignment of radio station WTRY-AM, Troy, New York, and WTRY-FM, Albany, New York, from Kops-Monahan Communications, Inc., to Scott Broadcasting Co. of Pennsylvania. This assignment raises three major problems—problems to which the majority's opinion scarcely alludes.

First, with this assignment, Scott Broadcasting will acquire its seventh AM and its fourth FM station. All of these stations broadcast to listeners in the mid-Atlantic portion of this country. Section 73.35 (b) of our rules precludes one individual or institution from owning more than one AM broadcast station if the resulting multiple ownership violates the public interest in a diversity of broadcast views. Section 73.240(a)(2) applies the same prohibition to FM stations. It is true, of course, that our rules state that ownership of more than seven AM or FM stations constitute a *per se* violation of the public interest. But that *per se* rule clearly does not mean that ownership of more than one, but less than seven, such stations cannot constitute a violation of the public interest standard.

The majority does not even refer to these rules. It makes *no* inquiry into the question whether Scott Broadcasting's ownership of seven AM and four FM stations—all in one clearly defined section of the country—poses any problems of concentration of media control. Such an inquiry might well indicate the need for a hearing in order to determine the extent of the assignee's control. And it is well established that this Commission does not like evidentiary hearings. Here, as in the past, see my dissenting opinion in *WDSU-TV, Inc.*, ——— FCC 2d ——— (1972), the majority's desire to avoid inquiry leads to the emasculation of our multiple ownership rules.

The second problem presented by this case is the fact that one of the assignee's current licensees is under attack by a petition to deny filed by a coalition of black community leaders in Harrisburg, Pennsylvania. That petition challenges Scott Broadcasting's ascertainment of community needs with respect to WFEC-AM; the petition alleges further that the licensee has discriminated against minority groups in both its programming and its employment practices.

Despite these serious challenges to Scott Broadcasting's basic qualifications as a licensee, the majority, rather than deferring action in the instant case, virtually ignores the petition to deny and lets Scott Broadcasting acquire still other radio interests. It is as if the majority has finally admitted that it does not take seriously community group oppositions to license renewals. For, if this Commission's policy were otherwise, it would be patently absurd to permit this assignee to win more radio stations when, at some future date, this Commission might well find the assignee unqualified to own those licenses it now holds.

Finally, the majority is not troubled by the fact that the assignee proposes to broadcast less than 5% of non-entertainment programming other than news and public affairs on both of its newly acquired stations. I have repeatedly expressed the view that a station which fails to broadcast less than 5% news, 1% public affairs, and 5% other non-entertainment programming cannot possibly be serving the public interest. *See, e.g.*, my dissents in *Pennsylvania-Delaware Renewals*, 36 FCC 2d 515, 549 (1972); *Washington Renewals*, ——— FCC 2d ——— (1972). Other Commissioners, such as former Commissioner Kenneth Cox, see our dissenting statement in *Renewal of Standard Broadcast and Television Licenses: An Oklahoma Case Study*, 14 FCC 2d 1 (1968), have been of this opinion as well, but the majority has never agreed. Nor does it agree today.

I dissent.

F.C.C. 73–122

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re LAFOURCHE COMMUNICATIONS, INC., LAFOURCHE PARISH (WARDS 1, 2, 3, 5), LA. Petition for Special Relief Filed Pursuant to Section 76.7 of the Commission's Rules	CSR–299 (LA052)

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 8, 1973)

BY THE COMMISSION.

1. On November 22, 1972, Lafourche Communications, Inc., filed a "Petition for Special Relief", pursuant to Section 76.7 of the Commission's Rules, requesting that the Commission authorize its existing cable television operations in certain portions of Lafourche Parish, Louisiana. The petition is unopposed.

2. On April 16, 1966, Lafourche was granted a franchise for cable television operations at the City of Thibodaux, Louisiana. On December 6, 1968, Lafourche filed a notification of proposed cable service, pursuant to former Section 74.1105 of the Rules. This notice was unopposed. Signals to be carried at Thibodaux included:

WAFB–TV	(Channel 9, CBS)	Baton Rouge
WYES–TV	(Channel 12, ETV)	New Orleans
WDSU–TV	(Channel 6, NBC)	New Orleans
WVUE	(Channel 8, ABC)	New Orleans
WWL–TV	(Channel 4, CBS)	New Orleans
WBRZ	(Channel 2, NBC)	Baton Rouge
WGNO–TV (formerly WWOM–TV)	(Channel 26, Ind)	New Orleans
KATC	(Channel 3, ABC)	Lafayette
KLFY–TV	(Channel 10, CBS)	Lafayette

In May, 1969, Lafourche filed a petition pursuant to former Section 74.1107 of the Rules to carry the three distant signals: WGNO–TV, KATC, and KLFY–TV. This petition was also unopposed, and on July 2, 1969, the Commission granted the requested authorization. *Lafourche Communications, Inc.*, 18 FCC 2d 529 (1969). The May, 1969 petition, while specifically requesting authorization for Thibodaux, also made reference to Lafourche Parish but without a specific request for authorization to operate in the unincorporated areas of the Parish. In March, 1970, Lafourche began its operations by providing service to subscribers in Thibodaux and in Wards One, Two, Three and Five of Lafourche Parish. In October, 1971, Television Broadcast Station WRBT (Channel 33, ABC), Baton Rouge, Louisiana, began operations, and, in December, 1971, Lafourche added this signal to

both the Thibodaux and Lafourche Parish systems. On July 20, 1972, Wometco Communications, Inc., purchased Lafourche Communications, Inc., and upon a review of the total operations, discovered that Commission authorization had never been specifically obtained for the existing cable service in Lafourche Parish. This petition was then filed to rectify the omission.

3. In its petition, Lafourche's failure to secure an appropriate Commission authorization to operate in the Parish is ascribed to simple inadvertence. Although a separate franchise was awarded to Lafourche to provide cable service to residents of the Parish, no thought was given to the necessity for specifying the Parish, as well as Thibodaux, in the earlier notification and petition filed with the Commission. The areas of the Parish served by the system are unincorporated and immediately surround the city of Thibodaux; and apparently it was not then considered a distinct governmental unit requiring a separate authorization.[1] Lafourche asserts that special relief now will prevent disruption of service to Parish subscribers, that Thibodaux and the surrounding areas of the Parish are so interrelated that the inadvertent failure to obtain separate authorization is understandable, and that good faith was demonstrated by bringing the omission to the Commission's attention. The City of Thibodaux has a population of approximately 15,000 persons of whom 2,441 are cable subscribers. The city is surrounded by Lafourche Parish where the cable system's headend is located. Lafourche is currently providing service to approximately 1,100 Parish subscribers located along the main trunk line from the headend to Thibodaux.

4. At the time of filing of Lafourche's earlier notification and petition, Thibodaux and the surrounding area of Lafourche Parish were not located within the 35-mile zone of any operating television station, and the signals carried on the Thibodaux system were consistent with the then existing rules and the interim processing procedures. But for Lafourche's failure to file the proper notification and petition for Lefourche Parish, its signal carriage there, which is identical to that in Thibodaux, also would have been consistent with the rules and procedures applicable when the system began service to Parish subscribers. However, Television Broadcast Station KHMA (Ch. 11, Ind.) Houma, Louisiana, began operations on March 1, 1972, and its 35-mile zone includes Thibodaux and the portions of Lafourche Parish where Lafourche is presently operating; hence, these areas are now within a smaller television market, and carriage of stations WBRZ, WGNO–TV, KATC, KLFY–TV, and WRBT would now be inconsistent with Section 76.59 of the Rules.

5. In *Coldwater Cablevision, Inc.*, 31 FCC 2d 17 (1971), we granted relief similar to that requested here. The facts are virtually identical. As in *Coldwater*, we are not persuaded that a grant of the request would create any meaningful question of impact upon the structure of broadcast television in the market, especially since the signals are being carried and will continue to be carried in the principal community of Thibodaux, and have already been carried in the Parish

[1] Both share the same municipal and public utility services, several Parish government offices are located in the City and they operate a unified school system.

for almost three years. It should be noted that Lafourche's request is unopposed, and that KHMA has informed Lafourche that it has no objection to its continued operation in Lafourche Parish. Moreover, as in *Coldwater*, since the system headend is located in the Parish, it would be technically impractical or impossible to delete signals in the Parish between the headend and Thibodaux and still carry the authorized signals in the city. In *Coldwater*, *supra*, at 19 we concluded:

> No useful purpose would be served in insisting upon strict compliance with our rules and procedures in this situation. To deny this requested service would deprive one set of subscribers the programming to which they have become accustomed over a number of years and for no very good reason.

We believe that the public interest will best be served by reaching the same conclusion here.

6. We recognize that Wards have been designated by the Lafourche Parish authorities as the appropriate unit for franchising there, and we find no objection to the use of these areas as a means of designating the extent of our authorization. Since Lafourche was operating in Wards One, Two, Three, and Five, prior to March 31, 1972, we will authorize continued operations in the unincorporated areas of those sectors. Of course, pursuant to Section 76.11(b) of the Rules, the Thibodeaux and Lafourche Parish systems will be required to obtain certification for their existing operations on or before March 31, 1977.

Accordingly, IT IS ORDERED, That the "Petition for Special Relief" filed November 22, 1972, by Lafourche Communications, Inc., IS GRANTED to the extent indicated above.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 73-102

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of MUSKEGON HEIGHT BROADCASTING CO., INC., MUSKEGON HEIGHTS, MICH. For CP for new FM Station	File No. BPH-7763

JANUARY 23, 1973.

MUSKEGON HEIGHTS BROADCASTING CO., INC.,
c/o Mr. William E. Kuiper, Post Office Box 178,
Muskegon Heights, Mich.

GENTLEMEN: This is in further reference to your application (File No. BPH-7736) for a construction permit for a new FM station in Muskegon Heights, Michigan.

By letter of September 7, 1972, we stated that your proposal raised substantial questions concerning (a) the efficient utilization of FM frequencies, and (b) an undue concentration of control of aural broadcasting in the southwest quadrant of the Lower Peninsula of Michigan. We indicated therein that the 1 mV/m contour of your proposed facility would overlap the 1 mV/m contour of commonly owned station WFUR-FM, Grand Rapids, Michigan, if either station were to operate at maximum values permitted under the rules. We further noted that a grant of your application would result in the seventh broadcast facility for the principals in your corporation, i.e., four standard broadcast stations and three FM stations, all located in four communities within the same general region of Michigan. You were requested to comment on these matters.

In response to this letter, you represent that potential transmitter sites exist for both the proposed station and WFUR-FM which could be utilized at some future date and which would allow for full implementation of facilities. Maximum operating power and antenna heights above terrain could be established at these potential sites without resulting in 1 mV/m contour overlap between the stations, without creating mileage separation problems with existing stations, and which would provide principal city coverage to the respective communities of license. With respect to the question of regional concentration of control, you have shown that numerous broadcast facilities exist in the area which are owned by other interests. In 1961, an application by Muskegon Heights Broadcasting Company for a construction permit for a new AM station in Muskegon Heights was designated for hearing on issues concerning, among other things, an undue regional concentration of control of AM broadcasting. The Hearing Examiner concluded that a grant of the application would not result in an undue concentration of control of mass media. 33 FCC 2d 660 (1962). This was based, in part, on the fact that there were 15

other standard broadcast transmission services and a minimum of five and a maximum of 21 reception services in certain communities in the region. Since 1962, eight FM stations and one television station have been added to these communities. Additional stations, especially FM, have also commenced operation in other communities within the same general area and provide competition and service to those communities in which you operate stations. Furthermore, there are a number of daily and weekly newspapers serving the communities involved and CATV systems are either operating in, or planned for, Muskegon, Muskegon Heights, Grand Rapids, Kalamazoo and Dowagiac. In addition to these factors, you represent that there will be no joint advertising rates among the stations in the four communities in which you have media interests, that no more than 10–15 percent of advertisers on one station will be advertisers on the other stations, and that stations in each community will be operated and programmed independently of the stations in the other communities.

In view of the foregoing, we believe that a grant of your application is warranted without the necessity for an evidentiary hearing to determine whether the proposed operation would be an efficient utilization of the assigned frequency and/or would result in regional concentration of control of broadcast media. Accordingly, IT IS ORDERED, that your application for a new FM station at Muskegon Heights, Michigan, IS HEREBY GRANTED.

Commissioner Johnson dissenting and issuing a statement; Commissioner H. Rex Lee dissenting; Commissioner Wiley concurring in the result.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

Last September, Messrs. William E. Kuiper, Sr. and William E. Kuiper, doing business as the Muskegon Heights Broadcasting Company, brought their application for a construction permit for a new FM station at Muskegon Heights, Michigan to the attention of this Commission.

Because the Kuipers also operate (and own 100% of) stations WKJR(AM), Muskegon Heights, WFUR and WFUR(FM), Grand Rapids, WDOW and WDOW(FM), Dowagiac, and WKPR(AM), Kalamazoo, the Commission notified the Kuipers that it intended to hold a hearing on their application, specifying an issue of undue concentration of control of mass media in the southwest quadrant of the lower peninsula of Michigan.

In addition, the Commission noted that, due to a potential overlap of contours with the Kuipers' station WFUR(FM) in Grand Rapids (which would violate our duopoly rules) the new facility at Muskegon Heights would have to be operated at something less than its maximum authorized power, thereby creating another serious question: the efficient utilization of the airwaves.

Whenever such a prehearing letter is adopted, an applicant is, of course, given the opportunity to respond with any justification he can muster for the activities or circumstances that first required a hearing.

If the Commission is satisfied with his response, it can rescind its order. If any major areas of concern remain open, however, it is the Commission's responsibility to continue with plans for an evidentiary hearing.

The Kuipers' response to their prehearing letter in this instance was trivial at best, containing little more than a few comic hypotheticals and unverified opinions about the current and potential "effects" of their expanding regional control. Inexplicably, the majority today reverses its previous decision, basing its "reasoning" on that response alone. Since I search the record in vain for any justification that would obviate the need for such clarifying facts as would be gathered in an evidentiary hearing, I must dissent.

Multiple ownership and regional concentration of control should be areas of great concern in a field that combines a severely limited access with such an enormous potential for abuse. Broadcasters alone, among the various media, have virtually instantaneous access to the minds of the people of this country, either nationwide (through our radio and television networks) or in any particular city or region of influence. Despite this state of affairs, it is a sad fact that we have allowed a huge percentage of our most important media to be brought under the control of no more than a handful of large corporations. See generally N. Johnson and J. Hoak, "Media Concentration: Some Observations on the United States Experience," 56 *Iowa L. Rev.* 267 (1970).

There are different types as well as different degrees of concentration of control of the mass media. The more common types, of course, have not been entirely ignored by this Commission. Concern for national patterns of ownership and control have led to Commission rulings on such matters as the number of television licenses that can be held by each network, the ownership by any licensee of more than seven stations of any single type (the "7–7–7" rule), the number of VHF facilities a licensee may own (5 of the 7 TV stations), or the number of television facilities in the top fifty markets.

Another type of concentration that has concerned the Commission has been of a strictly local nature, and rules and decisions have been handed down which deal with multimedia combinations in single or immediately contiguous markets, where a licensee will own a TV–AM–FM combination in a market along with the only afternoon newspaper in the county. See, e.g., *Chronicle Broadcasting Co.*, 17 F.C.C. 2d 245 (1969).

Yet mere cognizance of these problems, and a certain degree of objectivity in some of the rules, has not prevented the Commission from ignoring or abusing the important public interest standards that should prevail on such delicate issues. Even in what should be the most obvious areas of ownership concern the Commission has done little but encourage the consolidation of media control in the hands of the wealthy and the powerful. See, e.g., the changes wrought by the new *Multiple Ownership Rules*, 34 F.C.C. 2d 889 (1972), in which the Commission majority, without consulting either the Justice Department's antitrust division or the House Banking Committee, gave American banks the right to increase their broadcast holdings (in a diverse variety of interests) from 1% to 5% with no apparent scrutiny of their activities. See also the *Assignment of WDSU–TV to Cosmos Broadcasting Co. of Louisiana*, — F.C.C. 2d ———, ——— P & F R.R. 2d

——— (November, 1972), in which the 7–7–7 rules were "interpreted" to allow one individual to acquire a greater than 1% interest in his *eighth* VHF station and one bank to acquire a significant interest in its *ninth!*

A third type of media concentration—the type involved in this case—is even more often ignored or disregarded by the Commission majority, despite its obvious importance, because it is much less susceptible to easy quantitative analysis. Undue *regional* concentration can involve far fewer than the maximum "7–7–7" broadcast holdings now "allowed" individual licensees.* Unfortunately, that subtlety is lost on the majority of the members of this Commission, as they leap ever faster to grant, assign and renew licensees in cases flagrantly violative of our public trust.

The addition of this FM facility to the Kuipers' "stable" adds yet another voice to their aural blanket of one of our top fifty media markets, containing more than 709,000 total households. ARB Data for Grand Rapids/Kalamazoo stations, 41 *TV Factbook* 392–b (1971–72).

In my dissent to a similar previous action, in which a Kentucky broadcaster was allowed to purchase his tenth radio station in the eastern half of the state of Kentucky, I noted that the question that must be addressed in these cases is not the total population of the region involved, but rather the impact of the regional concentration upon the people residing in that region. *Assignment of Station WNVL*, 21 P & F R.R. 2d 77 (1971).

It is not enough merely to argue, as the applicant does here, that the presence of other media interests in the region is sufficient to offset the damage to the public interest that would accrue from the ownership of masses of outlets by a single owner. That is his opinion, at best an *allegation* of "fact," to be weighted along with a number of other considerations in the context of a hearing. In no way does it represent a rational grounds for abandoning some deeper inquiry. No one is foolish enough to believe that one man can own all the media in a region the size of this one. Does that mean we are to abandon any standard at all because the applicant has "proven" that he owns only 25 or 30% of its radio voices? The full thrust of our Rule provides that:

> No license . . . shall be granted . . . if the grant of such license would result in a concentration of control of standard broadcasting in a manner inconsistent with the public interest, convenience or necessity. In determining whether there is such a concentration of control, *consideration will be given to the facts of each case* with particular reference to such factors as the size extent and location of areas to be served, and the number of people served, classes of stations involved and the extent of other competitive service to the areas in question. [Emphasis added.]

*Alas, originally the "7–7–7" doctrine was meant to constitute a *per se* violation, not a "maximum allowable" standard. In the *Cosmos* case cited above, however, the primary licensee was acquiring its fourth VHF in a major market, three of which were located so close to one another that their predicted Grade B contours actually appeared to overlap, in flagrant violation of Rule 73.636(a)(7). The majority granted the transfer without batting an eyelash in the direction of the public interest, claiming the licensee had not yet traversed the "standard" set out in the Rules. But compare this reasoning with the language of the Rule itself, which instructs the Commission to determine the existence of a concentration of control, giving weight to "the facts of each case," but should "in any event consider that there would be such a concentration . . . contrary to the public interest" for any licensee or any of its stockholders, officers or directors to have "a direct or indirect interest" in more than seven stations. 47 CFR 73.636(a)(2).

I had generally been under the impression that, where such a large number of stations are involved in such a small region, the "consideration" called for in the Rule should be something more than a blind acceptance of the representations of the party seeking to avoid its application. See my dissent in *Times Herald Printing Co.*, 25 F.C.C. 2d 984 (1970). To refuse to hold a hearing on this issue merely perpetuates the "almost total abdication of responsibility for media concentration" I've pointed out in the past as endemic to this Commission majority. *WNVL*, 21 P & F R.R. 2d 77, at 79.

As if the concentration issue alone were not enough, the majority also reverses itself on the issue of "efficient use of the airwaves" in this case, originally prompted by the Kuipers' efforts to evade the letter and spirit of our duopoly rules.

The duopoly rules specifically provide that stations which are commonly owned cannot have overlapping signals. 47 CFR 73.35 (1970). Although this rule too has been waived (like every other significant technical rule we are obliged to enforce), the Commission has generally been stricter here, holding even the tiniest overlap of contours as sufficient reason, in some cases, for rejecting an application for a new or assigned station. See, e.g., *Quinnipiac Valley Service, Inc.*, 27 F.C.C. 2d 66 (1971), in which the Commission refused to permit waiver for an overlap of just 3.6% of the total area served by two radio stations, where the principal involved owned half or less of each station.

In the instant case, the Kuipers will own 100% of the new station as well as 100% of nearby station WFUR(FM), Grand Rapids. If this new station were to operate at its full authorized power, its 1 mV/m contour would overlap with that of WFUR, thus causing a violation of the duopoly rule that would almost certainly have resulted in a refusal of this Commission to grant him the new station. The mere fact that he chooses to specify an operation level lower than the maximum allowable for this assignment therefore avoids the almost certain *per se duopoly* violation, but it does not negate the fact that the resulting underutilization of the frequency still poses a problem of the public interest. It deprives some members of that public of a service they would otherwise enjoy if this station were not under common ownership with an adjacent facility.

Applicant's response to his prehearing letter on this issue was as clever as it was absurd: Problem? What problem? All I need do is move each of my transmitters, at some future date, about four or five miles from their current sites, and the inefficiency would disappear! Note that he was not saying he *would* move the transmitters—only that *if* he did, there would no longer be any problems. Yet, incredibly, the Commission majority has bought this argument, thereby subverting its hearing procedure, by which such important, complicated issues are to be weighed rationally.

I dissent.

F.C.C. 73-134

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Protest to Assignment of
LICENSE FOR RADIO STATIONS WJAS-AM AND FM, PITTSBURGH, PA., FROM NATIONAL BROADCASTING CO., INC. TO GOLDEN TRIANGLE BROADCASTING CO., INC. AND CONSO-CONSOLIDATED, INC.

JANUARY 31, 1973.

DEAR ———: This refers to your recent letter to the Commission protesting the pending assignment of license application for radio Stations WJAS-AM & FM, Pittsburgh, Pennsylvania from National Broadcasting Co., Inc. to Golden Triangle Broadcasting Co., Inc. (WJAS-AM) and Conso-Consolidated, Inc. (WJAS-FM). You have objected to the assignee's proposals that would eliminate the current "All Talk" format of the subject stations.

We are aware that NBC has operated WJAS-AM & FM as primarily "All Talk" with little musical programming. The Bureau has received several letters from Pittsburgh area listeners who also object to the assignee's decision to eliminate this "All Talk" format. In response to a Bureau letter dated September 19, 1972, the assignee has defended its musical format proposals with the following reasoning:

1. Even though the subject stations were owned by NBC and utilized the extensive newsgathering facilities of the network, the stations have experienced a history of substantial financial losses with the present "All Talk" format.

2. Station KDKA-AM, Pittsburgh has provided extensive competition for the subject stations by programming 13 hours per day of a similar talk format; the assignee feels that without the financial strength that NBC enjoyed, it could not effectively compete with the talk format of KDKA.

3. The public affairs programming that listeners enjoy on WJAS-AM & FM, will to a substantial degree be continued by the assignee. In addition, the assignee has entered into two detailed "agreements" with local citizens organizations that will assure continued community involvement by the assignee through its public affairs programming. These two groups are: the Black Policy Board and the local chapter of the National Organization of Women.

Based on the above showing of loss of income through the talk format and the availability of such a format on KDKA, the Commission finds that the assignee's proposals to change the existing formats for WJAS-AM & FM will serve the public interest. The assignee's programming proposals will clearly provide Pittsburgh with substantial public affairs programming and with the existence of the "agreements" between the assignee and community groups, continued involvement in community needs and interests will be assured.

Therefore, the application to assign the licenses for radio Stations WJAS-AM & FM, Pittsburgh, Pennsylvania has been found to

be in the public interest, and accordingly the Commission has this day granted the subject application.

Your interest in this matter has been appreciated.

Commissioner Johnson dissenting.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
RENEWALS OF BROADCAST LICENSES FOR NORTH CAROLINA AND SOUTH CAROLINA

DECEMBER 20, 1972.

Staff action of December 6, 1972 reviewing Broadcast licenses for North Carolina and South Carolina, approved.

DISSENT TO NORTH CAROLINA-SOUTH CAROLINA BROADCAST LICENSE RENEWALS BY COMMISSIONER NICHOLAS JOHNSON.

Commissioner Nicholas Johnson has dissented to the license renewals of North Carolina and South Carolina radio and television stations, taken in an FCC staff action of December 6, 1972. The dissent is attached.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

Today the Federal Communications Commission again reveals that it is oblivious to the interests of the public. The majority refuses to question the fact that several of the stations owned by its licensees (this time in the North and South Carolina renewal group) propose news, public affairs, and other non-entertainment programming which fall woefully below the most meager of standards.

Four of this group's 297 AM radio stations and three of its television stations propose to program less than 5% news each week. Seven AM stations and one TV station (the same UHF station which refuses to program more than 1% news) proposed to broadcast less than 5% in the combined category of public affairs and other non-entertainment programming.

I am not certain where the majority gets this last category. Back in 1968 former Commissioner Kenneth Cox and I suggested that the FCC should have serious questions about whether broadcast stations are serving the public interest when they program less than 5% news, 1% public affairs, and 5% "other" non-entertainment programming. The majority disagreed; apparently, no station's programming decisions can raise public interest questions insofar as this majority is concerned.

Be that as it may, neither Commissioner Cox nor I ever referred to the "combined category of public affairs and other non-entertainment programming." Today, the Commission, in introducing that category, fails to make public the number of stations in this renewal

group which will fail to broadcast even 5% of non-entertainment programming other than news and public affairs.

I suppose, however, that a Commission which is not going to do anything about its licensees' stubborn refusals to serve the public interest, is also not going to be concerned with details.

I dissent.

F.C.C. 72–1035

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of NORTHEAST OKLAHOMA BROADCASTING, INC., VINITA, OKLA.	File No. BP–19163
P B L BROADCASTING Co., VINITA, OKLA. Request: 1470 kHz, 500 W, Day (Facilities of KVIN, Vinita, Okla.)	File No. BP–19233

MEMORANDUM OPINION AND ORDER

(Adopted November 17, 1972; Released November 21, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON, REID AND WILEY ABSENT.

1. Before the Commission for consideration is a "Motion for Stay" of the Commission's Memorandum Opinion and Order in this proceeding denying Northeast's request for joint interim authority to operate the facilities of station KVIN pending the termination of the forthcoming comparative hearing between the applicants for regular authority. *Northeast Oklahoma Broadcasting, Inc.*, ——— FCC 2d ———, FCC 72–1019. PBL has filed a letter in opposition to the motion.[1]

2. Since April of 1972, Northeast has been operating the facilities of KVIN on a temporary basis following termination of a proceeding in which the Commission denied the former operator's application for renewal of license. *Vinita Broadcasting Company, Inc.*, 30 FCC 2d 458, 22 RR 2d 195 (1971), reconsideration denied, 32 FCC 2d 501, 23 RR 2d 262 (1971). Northeast's temporary ninety-day authorization was issued pursuant to section 309(f) of the Communications Act of 1934, as amended, and was extended for a second ninety-day period on July 19, 1972. Upon expiration of the statutory authorization, the Commission, with the consent of the competing applicant, granted Northeast a special temporary authorization (STA) for a period of thirty days, to permit Commission consideration of its proposal for joint interim operation. Since the aforementioned Memorandum Opinion and Order denying Northeast's request for interim authority did not extend the STA, it is scheduled to expire at midnight tonight.

3. Northeast requests a stay of the Commission's action until (i) it has filed a petition for reconsideration pursuant to section 405 of the Act and we have ruled on that petition, or (ii), in the alternative, until it has filed a notice of appeal and motion for stay in the U.S. Court of Appeals within ten days of any order denying the present motion and until the Court has resolved Northeast's appeal.

[1] Northeast's motion was filed November 16, 1972, and PBL's opposition on the following day.

4. In order to afford Northeast ample time to prepare and file its motion for stay with the Court of Appeals, we will stay the effectiveness of our previous action to the extent that it would result in termination of Northeast's broadcast activities as of November 17, provided that the motion for stay is filed within ten days of the release of this Order. This action will enable the Court of Appeals to rule on such motion for stay without being burdened by a rapidly approaching deadline.

5. We will not, however, stay that portion of our recent action which denied the request for interim authority. To stay the effectiveness of our denial pending dispositive action on any future petition for reconsideration and/or appeals would involve a considerable length of time and would thus tend to work at cross-purposes with our denial of the interim authority request.

6. In so ruling, we find it unnecessary at this juncture to discuss at length many of the substantive arguments raised by Northeast in its motion. These arguments bear directly on issues relevant to the Commission's denial of the interim authority request. Thus, it would appear more appropriate if the merits of these contentions were dealt with after Northeast has filed its petition for reconsideration or by the Court upon appeal. Nonetheless, we note that the denial of Northeast's request for interim authority was ordered with some reluctance. In order to continue service to Vinita and its environs, the Commission earlier this year moved swiftly under section 309(f) to authorize Northeast to operate the station. Once interest in an interim authorization was expressed, members of the Commission's staff consulted with the parties on numerous occasions and attempted to work out an arrangement which would be consistent with Commission policy. Unfortunately, as noted in paragraph 4 of our previous Order, the applicants reached an impasse in the negotiations. This was occasioned by PBL's refusal to agree to reimburse Northeast for one-half of its capital investment in the station's equipment.[2] While at first blush this refusal might not seem so, we believe that it was reasonable under the circumstances. The Commission has never compelled an applicant to buy equipment or land which it did not find would be suitable for future operation once permanent authority was granted. PBL has informed us that it declined to buy the equipment from the former licensee because it was in such poor condition. Thus, when Northeast purchased the equipment it did so at its own risk and it should have known that its ownership of the equipment would not compel the Commission to grant it interim operating authority. In order to preserve an existing broadcast service, the Commission maintains a policy of encouraging joint interim operation whenever possible and this case is certainly no exception. The reasons favoring joint operations rather than operation by a single competing applicant are manifest and need not be discussed here. This policy would be easily frustrated, however, if the Commission allowed a party to purchase the physical facilities of a defunct station secure in the knowledge that it could then exact capital contribution from other applicants wishing to participate in a

[2] Although we did not allude to it in our previous Order, the present general manager of KVIN operated the station under direction of the former licensee and PBL would not consent to his management of the proposed joint interim operation.

109-027—73——8

joint interim operation. This result, or any ruling which might encourage such a result, we cannot permit.

7. Finally, we must stress the fact that we are not unmindful of the plight of the residents of Vinita.[3] It was for this reason that the Commission, in paragraph 5 of our aforementioned Order, left the door open, stating that we "will entertain a further request for interim operating authority if and when the competing applicants may be able to agree on the terms under which . . . [it] can be conducted." In this connection, we maintain, as did our staff during the course of discussions with counsel for the applicants, that the proper method of proceeding would involve the formation of a third entity by the applicants to operate the station, and the payment of a fair rental by that entity to Northeast. In this manner, the pitfalls inherent in the forced capital contribution noted above can be avoided.

8. In view of the foregoing, IT IS ORDERED, That if Northeast Oklahoma Broadcasting, Inc., notifies the Commission within two days of the release of this Order that it intends to seek a stay of the Commission's Memorandum Opinion and Order adopted November 15, 1972 (FCC 72–1019), from the United States Court of Appeals for the District of Columbia Circuit and seeks such a stay within ten days of the release of this Order, the Commission's aforementioned Memorandum Opinion and Order IS HEREBY STAYED, to the extent that it requires Northeast Oklahoma Broadcasting, Inc., to cease broadcasting as of November 17, 1972, until the day after the Court acts on the prospective motion for stay, and IS DENIED in all other respects.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[3] The Commission's finding under section 309(f) was based on KVIN's being the only local broadcast outlet for Vinita. However, we note that Vinita receives service from at least a dozen or more aural broadcast stations licensed to cities within a sixty-mile radius. It also receives television service from Tulsa, Oklahoma.

F.C.C. 73–124

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of R. W. PAGE CORP., TRANSFEROR and J. W. WOODRUFF, JR., AND J. BARNETT WOODRUFF, TRANSFEREES For Transfer of Control of Columbus Broadcasting Co., Inc., Columbus, Ga. (WRBL–AM–FM–TV)	BTC–6943

JANUARY 31, 1973.

Mr. J. W. WOODRUFF, Jr.,
Post Office Box 270,
Columbus, Ga.

DEAR MR. WOODRUFF: This is with reference to the application for consent to the transfer of control of Columbus Broadcasting Company, Inc. (BTC–6943), licensee of Stations WRBL–AM–FM–TV, Columbus, Georgia from the R. W. Page Corporation to yourself (81.22%) and your brother, J. Barnett Woodruff (18.78%).

The "one-to-a-market" provisions, Sections 73.35, 73.240 and 73.636, generally proscribe the acquisition of broadcasting stations where such an acquisition will result in the common ownership or control of both aural and television facilities in the same market. You have requested a waiver of these rules to permit the acquisition of Stations WRBL–AM–FM–TV, Columbus, Georgia, and in the alternative, you have stated your willingness to accept a grant conditioned on a subsequent disposition of Stations WRBL–AM & FM within a reasonable time.

We note that at the present time you own 39.8% of Columbus Broadcasting Company, Inc. and J. Barnett Woodruff owns 9.2% and that this ownership has existed since 1953. In that year, Stations WRBL–AM & FM were assigned to Columbus and its was granted a construction permit to build WRBL–TV. Prior to that time Columbus was controlled by the Woodruff family. In fact the Woodruff family has been connected with Station WRBL since 1930, when J. W. Woodruff, Sr. purchased 50% of the licensee's stock and became President and Director of the licensee corporation. You have also had long time associations with the stations, serving as Executive Vice-President and Manager of WRBL–AM & FM from 1935 to 1953. In 1953 you became the WRBL–TV General Manager and President of the licensee corporation, positions which you still hold. Your qualifications, with respect to the subject stations, have been passed upon several times by the Commission (e.g. the 1938 transfer to J. W. Woodruff and yourself, the 1946 construction permit for Station WRBL–FM and major change application for Station WRBL in

1947). In 1953 we again passed upon your qualifications in regard to the WRBL–AM & FM transfer and the WRBL–TV construction permit applications.

We also note that in addition to its controlling interest in Stations WRBL–AM–FM–TV, the transferor owns the only two daily newspapers in Columbus—the morning *Ledger* and the evening *Enquirer*. Columbus has two other commercial television stations, one of which is UHF, five other AM and two FM radio stations. Approval of this application would separate ownership of Columbus' newspapers and broadcast facilities and would further Commission policy favoring diversity in mass media.

In view of the above described circumstances, we have determined that a waiver of the multiple ownership rules is warranted. Accordingly, we have this day waived the "one-to-a-market" provisions of our multiple ownership rules and granted your application for transfer of control of Columbus Broadcasting Company. While the Commission's 2% grant fee cannot be precisely determined at this time, it will be based on the following two factors: $2,244,003.64 plus the mean between the bid and asked price on the last business day before consummation of 2,480 shares of Tele-Communications, Inc.

Commissioner Johnson dissenting and Commissioner H. Rex Lee dissenting and issuing a statement.

By Direction of the Commission,
Ben F. Waple, *Secretary*.

Dissenting Statement of Commissioner H. Rex Lee

I must dissent to the majority's action in approving the application for transfer of control of Columbus Broadcasting Company, Inc., licensee of Stations WRBL–AM–FM–TV, Columbus, Georgia. R. W. Page Corporation now owns 51% of the stock of Columbus Broadcasting,[1] and J. W. Woodruff, Jr. and J. Barnett Woodruff (his brother) own 39.8% and 9.2%, respectively. By the proposed transaction, Columbus Broadcasting will redeem the Page Corporation shares, which will have the effect of increasing J. W. Woodruff, Jr.'s interest in the corporate licensee to 81.22% and J. Barnett Woodruff's interest to 18.78%. The transferees request waiver of the Commission's multiple ownership rules, which proscribe any acquisition that results in the common ownership or control of both aural and television facilities in the same market. Alternatively, the transferees indicate their willingness to accept grant of their application conditioned on the subsequent disposition of Stations WRBL–AM and FM within a reasonable time.

The majority's rationale for waiver of the multiple ownership rules and unconditional grant of the transfer application is based on the following considerations: (1) the Woodruffs are already substantial stockholders in Columbus Broadcasting, and J. W. Woodruff, Jr. has served in various executive and managerial positions with the stations

[1] R. W. Page Corporation also owns the only two daily newspapers in Columbus—the morning *Ledger* and the evening *Enquirer*.

since 1935;[2] (2) the Woodruff family has had a long association with the Columbus stations;[3] (3) the qualifications of the transferees have been passed upon by the Commission in connection with various applications; (4) the proposed transfer will separate the common ownership of the two Columbus daily newspapers and the broadcast facilities; and (5) J. W. Woodruff, Jr. could have acquired positive control of the licensee through the acquisition of less than a 50% stock interest on the basis of an FCC Form 316 (Short Form) application to which the multiple ownership restrictions are inapplicable.[4]

I simply cannot agree with such an ill-considered action. As I previously indicated in my dissenting statement in the *Pacific Broadcasting Company* case, our multiple ownership rules do apply to applications for assignment of license and transfer of control of existing stations, and only involuntary or *pro forma* assignments and transfers (as defined in Sections 1.540(b) and 1.541(b) of the Rules) are exempted from the duopoly provisions of the multiple ownership rules. Since the transfer here is voluntary and the interest to be transferred is a controlling one, whereby the Woodruffs will gain total ownership of the licensee, our multiple ownership rules are applicable and would proscribe the Woodruffs' acquisition of control of the Columbus aural and television facilities. While it may be true that the Woodruffs have enjoyed substantial interests in the corporate licensee in the past and J. W. Woodruff, Jr. has occupied executive and managerial positions with the stations, the fact remains that the transfer will give them positive and complete control over the policies and programming of the Columbus stations. Therefore, it cannot be seriously argued that the goals of our expanded duopoly rules, *i.e.*, to promote competition and to increase the diversification of program and service viewpoints, are furthered by the concentration of control of the licensee in the hands of the Woodruffs. While the decision is not an easy one to make in light of the Woodruffs' existing interests in the licensee, their family's longstanding relationship with the stations, our prior assessment of the Woodruffs' qualifications and the proposed separation of newspaper and broadcast properties in Columbus, I do not believe that we should avoid our carefully-conceived plan to bring new competition and viewpoints to broadcasting.

Moreover, I am most concerned by the majority's apparent acquiescence in the position that since J. W. Woodruff, Jr. could have acquired positive control of the licensee through transfer of less than a 50% interest in Columbus Broadcasting and the filing of an FCC Form 316, the Commission need not be troubled by the multiple ownership ramifications of the proposed transfer. Contrary to the majority's approach, it seems clear to me that whenever a minority shareholder in a

[2] J. W. Woodruff, Jr., is presently president of the licensee corporation and general manager of Station WRBL–TV—positions which he has held since 1953. Prior thereto, he served as executive vice-president and manager of Stations WRBL–AM and FM.

[3] J. W. Woodruff, Sr. originally purchased 50% of WRBL's stock and became president and director of the licensee corporation in 1930. The Woodruff family controlled WRBL–AM and FM until 1953 when, pursuant to an agreement involving the WRBL–TV construction permit, Columbus Broadcasting became the licensee of the three stations with Commission approval. The proposed transfer will return the Woodruff family to control of the licensee after about 20 years in a minority position.

[4] This consideration is implicit in the majority's rationale. It was specifically referred to as a basis for waiver of the multiple ownership rules and grant of a transfer application involving two Hawaii aural-television combinations in *Pacific Broadcasting Company, Inc.*, 37 FCC 2d 448 (1972). I dissented to that action as well.

corporate licensee seeks to acquire enough stock to give him affirmative or negative control, prior Commission approval should be obtained consistent with the mandate of Section 310(b) of the Communications Act. The basic issue to be addressed here is not whether Woodruff could have acquired positive control of the licensee without triggering our multiple ownership restrictions, but rather whether the proposed transfer of more than a 50% interest is consistent with our diversification policies. Our approach in such situations should be in favor of the broad application of our multiple ownership policies rather than the creation of an additional exemption that subverts the very purpose of our regulations.

Since I am unable to find sufficient public interest considerations which would outweigh the importance of our existing diversification policies,[5] I can only conclude that our multiple ownership rules prohibit this transfer, which would concentrate control of the Columbus AM–FM–TV combination in the hands of the Woodruffs. As a result, I would either deny the transfer application or approve a grant subject to the transferees' divestiture of either the aural or television facilities.

For these reasons, I respectfully dissent to an action that effectively ignores the diversification goals of our multiple ownership rules and encourages the evasion of statutory and administrative requirements relating to the transfer of control of broadcast licensees.

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[5] While the Commission has indicated its concern with the problem of newspaper-broadcast joint ownership and its effect on diversification goals, no rules have been adopted which would require separation of such interests. See *Further Notice of Proposed Rulemaking in Docket No. 18110*, 22 FCC 2d 339 (1970). In any event, the fact that approval of the proposed transfer will result in separation of newspaper-broadcast interests in Columbus is insufficient reason to waive our existing duopoly restrictions.

F.C.C. 73-120

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
PARSEN ELECTRIC CO., WYMORE, NEBR.	CAC-611 NE045
PARSEN ELECTRIC CO., BLUE SPRINGS, NEBR.	CAC-612 NE046
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 8, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER REID DISSENTING.

1. Mr. E. M. Parsen, doing business as Parsen Electric Co., has filed the above-captioned applications for Certificates of Compliance to begin cable television service at Wymore and Blue Springs, Nebraska, small communities located outside of all television markets. Mr. Parsen intends to carry the following television broadcast signals on these two systems:

KOLN-TV	(CBS)	Lincoln, Nebr.
KUON-TV	(Educ.)	Lincoln, Nebr.
KMTV	(NBC)	Omaha, Nebr.
KETV	(ABC)	Omaha, Nebr.
KHTL-TV	(ABC)	Superior, Nebr.

The signal of KHTL-TV will be carried pursuant to a request by Bi-States Company, licensee of KHTL-TV. However, the applicant does not wish to extend network program exclusivity protection to KHTL-TV, and Bi-States opposes certification until its station is assured both carriage and exclusivity protection.

2. Although KHTL-TV places a predicted Grade B contour over Wymore and Blue Springs, it is not significantly viewed in these communities. Mr. Parsen argues that the carriage of KHTL-TV and the extension of exclusivity protection to its network programming will not assist the "marketing of cable service", and may even be detrimental to its growth.

3. As stated above, both Wymore and Blue Springs are very small communities. In 1970, Wymore's recorded population was 1,790 while Blue Spring's was 615, and both figures represented small declines since 1960. Under the circumstances, we believe a temporary waiver of Section 76.91 is in order. In the *Cable Television Report and Order*, we specifically noted the retention of the policies and precedents which evolved under the former program exclusivity rule, Section 74.1103. Par. 98, *Cable Television Report and Order*, 36 FCC 2d 143, 181. One of these policies was to waive the immediate imposition of program

exclusivity by small systems which had yet to obtain 500 subscribers. See *Spencer Community Antenna System, Inc.*, 22 FCC 2d 57 (1970). We believe the public interest will be served if a similar temporary waiver is extended to the applicant's systems, until 500 subscribers are served by each system.

In view of the foregoing, the Commission finds that a grant of the subject applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the applications for Certificates of Compliance (CAC–611 and CAC–612) filed by the Parsen Electric Co., for Wymore and Blue Springs, Nebraska, ARE GRANTED and appropriate Certificates of Compliance will be issued.

IT IS FURTHER ORDERED, That the objection of Bi-States Company IS DENIED.

IT IS FURTHER ORDERED, That the Parsen Electric Co., IS DIRECTED to comply with the requirements of Section 76.91 of the Commission's Rules with respect to its cable television systems at Wymore and Blue Springs, Nebraska, seven (7) days after it obtains at least 500 subscribers for either system.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-140

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTION 0.485 AND APPENDIX 1 PART 97 OF THE COMMISSION'S RULES REGARDING RADIO OPERATOR EXAMINATION POINTS

ORDER

(Adopted February 7, 1973; Released February 12, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. The Commission has before it the desirability of amending Section 0.485 showing the location of the Field Engineering Bureau's examination points for amateur and commercial radio operator licenses.

2. Authority for the amendment is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Section 552 of the Administrative Procedure Act and Section 0.261(a) of the Commission's Rules. Because the amendment is procedural in nature, the prior notice and effective date provisions of Section 553 of the Administrative Procedure Act do not apply.

3. IT IS ORDERED, that effective February 21, 1973, Parts 0 and 97 of the Rules and Regulations are amended as set forth in the Appendix hereto.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

§ 0.485 [Amended]

The semi-annual examination points listed in 0.485(c) are amended by adding in the appropriate alphabetical order, the city of Helena, Montana, and the annual examination points are amended by deleting Great Falls, Montana and Helena, Montana.

Part 97—Appendix [Amended]

The semi-annual examination points listed in Appendix 1 are amended by adding in the appropriate alphabetical order the city of Helena, Montana. The annual examination points listed are amended by deleting the cities of Great Falls, Montana and Helena, Montana.

F.C.C. 73–123

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
REGIONAL CABLE CORP., D.B.A. GLEN ROCK CABLE CORP., GLEN ROCK, PA.	CAC–1038 PA09A
REGIONAL CABLE CORP., D.B.A. DILLSBURG CABLE TV CO., DILLSBURG, PA.	CAC–1208 PA58A
REGIONAL CABLE CORP., D.B.A. SPRING GROVE CABLE TV CO., SPRING GROVE, PA.	CAC–1244 PA1022
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 8, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT.

1. Regional Cable Corporation has filed applications for certificates of compliance to begin cable television service at Glen Rock, Dillsburg, and Spring Grove, Pennsylvania, small communities located within the Harrisburg-Lancaster-York, Pennsylvania television market (the 57th largest television market). Each cable system will be separately operated, although Regional intends to build uniform 27 channel capacity systems carrying the identical signals in every community. The signals of the following stations are proposed for carriage: WLYH–TV (CBS), WGAL–TV (NBC), Lancaster, Pennsylvania; WSBA–TV (CBS), York, Pennsylvania; WITF–TV (Educ.), Hershey, Pennsylvania; WHP–TV (CBS), WTPA (ABC), Harrisburg, Pennsylvania; WMPB (Educ.), WBAL–TV (NBC), WJZ–TV (ABC), WMAR–TV (CBS), Baltimore, Maryland; WTTG (Ind.), WDCA–TV (Ind.), Washington, D.C. These applications are unopposed, and the proposed signal carriage is consistent with Section 76.63 of our Rules.

2. The Commission's Rules require new cable systems intending to begin operations in the major television markets to have a capacity of twenty channels, two-way communications capability and separate channels for public, educational and local government access in each community. Regional requests a partial waiver of Section 76.251 of the Rules insofar as this Rule requires that it provide three separate access channels in each community. At the present time, the applicant contends that it has neither the personnel nor the financial ability to comply wholly with Section 76.251 of the Rules. Moreover, each community is a very small one, and it is most unlikely that sufficient demand will develop in each community for the provision of three separate access channels. Glen Rock's 1970 population was 1,590; Dillsburg's was 1,434; and Spring Grove's was 1,662. There are no more than 600 homes

in any community, and at best Regional can hope to obtain fewer than 400 subscribers for any one of its systems. As an alternative to full compliance, Regional urges that one common access channel per community should satisfy any immediate demand for access.

3. We have provided similar relief in *Stark County Communications, Inc.*, FCC 72–1189, — FCC 2d —— (1972). Small systems which happen to be located in major television markets will be spared the expense of full compliance with Section 76.251 of the Rules in appropriate situations. We believe that the small size of these particular communities justifies the partial waiver requested, and certification will be authorized; however, should sufficient demand for full access develop in these communities, then we expect Regional Cable Corporation to make additional access channels available.

In view of the foregoing, the Commission finds that a partial waiver of Section 76.251 of the Rules and grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That Regional Cable Corporation IS GRANTED a partial waiver of Section 76.251 of the Rules to the extent indicated in paragraph 3 above.

IT IS FURTHER ORDERED, That the applications (CAC–1038, 1208, 1244) for certificate of compliance filed by Regional Cable Corporation for Glen Rock, Dillsburg and Spring Grove, Pennsylvania ARE GRANTED and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING STATEMENT OF COMMISSIONER NICHOLAS JOHNSON

I dissent to the grant of these certificates of compliance and to the majority's waiver of our public, educational and governmental access rules for the reasons set forth in my dissents to *Stark County Communications*, ——— FCC 2d ——— (1973), and *Saginaw Cable TV Co.* (decided this day).

F.C.C. 73-121

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
SAGINAW CABLE TV CO., SAGINAW, MICH.	CAC-580, CSR-198 MI145
SAGINAW CABLE TV CO., TOWNSHIP OF SAGINAW, MICH.	CAC-581, CSR-200 MI146
SAGINAW CABLE TV CO., ZILWAUKEE, MICH.	CAC-582, CSR-199 MI147
SAGINAW CABLE TV CO., TOWNSHIP OF CARROLLTON, MICH.	CAC-583, CSR-201 MI148
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 8, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT.

1. On June 6, 1972, Saginaw Cable TV Co. filed the above-captioned applications for four new twenty-six channel cable television systems to operate from a common head end and offer service to approximately 91,849 persons in Saginaw, Michigan (the 61st television market); approximately 27,234 persons in Township of Saginaw, Michigan; approximately 2,072 persons in Zilwaukee, Michigan; and approximately 8,526 persons in Township of Carrollton, Michigan. Saginaw Cable proposed to offer subscribers the television signals of WKNX-TV (CBS),[1] Saginaw, Michigan; WNEM-TV (NBC), Bay City, Michigan; WJRT-TV, Flint, Michigan; WJIM-TV (CBS), Lansing, Michigan; WUCM-TV (Educ.), Bay City, Michigan; WKBD-TV (Ind.), Detroit, Michigan; and CKLW-TV (Ind.), Windsor, Ontario. Public notice of these applications was given June 28, 1972. On July 31, 1972, Rust Craft Broadcasting Company, licensee of Station WEYI-TV, Saginaw, Michigan, filed an "Opposition to Applications for Certificates of Compliance and Petition for Special Relief" in which it requested special relief against Saginaw Cable's proposed carriage of WJIM-TV and CKLW-TV. Thereafter, on August 10, 1972, Rust Craft and Saginaw Cable entered into a private agreement whereby Saginaw Cable agreed to withdraw its proposal to carry WJIM-TV and Rust Craft agreed to withdraw its objections. Saginaw Cable amended its applications on September 12, 1972, to withdraw its request to carry WJIM-TV, and on September 29, 1972, Rust Craft withdrew its objections. Next, on October 12, 1972, Gross Telecasting, Inc., licensee of Station KJIM-TV, Lansing, Michigan, filed an "Opposition to Application for Certificates of Compliance, as Amended,"

[1] The call letters of this station were later changed to WEYI-TV.

directed against CAC–580, CAC–582, and CAC–583, and Saginaw Cable and Rust Craft have replied.

2. The issue presented by the pleadings is whether Gross is entitled to insist on carriage of WJIM–TV. WJIM–TV is not a station which Saginaw Cable could normally carry; however, by virtue of our decision in *Booth American Co.*, 13 FCC 2d 270 (1968), an argument can be made that carriage of WJIM–TV is grandfathered in Saginaw, Zilwaukee and Township of Carrollton (Gross does not claim that the *Booth* decision dealt with Township of Saginaw, and therefore has not opposed CAC–581). Whatever the likelihood that it might have prevailed on this claim [2], Saginaw Cable elected to give it up in order to settle the controversy with Rust Craft. Gross now objects on the rationale that grandfather rights should be extended to the station involved as well as to the cable television system, and that Rust Craft should not be allowed to benefit from its earlier objection. This argument is unsupported in citation to Commission precedent, and ignores the fact that Gross is itself apparently attempting to practice the same tactic. Under the circumstances, we think Saginaw Cable was entitled to enter into a private settlement with Rust Craft in order to resolve the uncertainties connected with its applications, and that Gross has no ground upon which it is entitled to object. Accordingly, Gross' opposition will be denied.

3. An additional matter requires mention. In its amendment of September 12, 1972, Saginaw Cable states that:

> "As described in its certification application, Saginaw Cable proposes at this time to provide one public access, one educational access and one local government access channel for its system serving Saginaw, Zilwaukee, Saginaw Township, and Carrollton Township. Each of these communities, which will be served by a single head end located in Saginaw, forms part of a single contiguous urbanized area of which Saginaw is the center culturally, economically, and geographically. The people living in these communities share common interests and concerns which can best be served by common access channels. Since Saginaw Cable cannot predict the extent of use of access channels at this time (there are only 2,072 people in Zilwaukee and 8,526 people in Carrollton Township according to the 1970 Census), it will make such additional channels available on a system-wide basis as are justified by the demand for public, educational, and local government access. In this way, the Commission's intention that access be available will be satisfied, and no initial user will be subjected to the problem of reception in the home being dependent upon a channel converter."

We understand this statement to indicate the rate at which Saginaw Cable intends to make access channels available (we note that it is proposing to install sufficient channel capacity to allow it to satisfy access requirements for all four systems), and have no objection to it. See also par. 90, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 359. However, should sufficient demand develop, we expect Saginaw Cable to make additional access channels available.

In view of the foregoing, the Commission finds that a grant of the above-captioned applications would be consistent with the public interest.

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[2] Par. 49, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 345, recognized that WKNX might have a "meritorious" claim, but left its settlement for special relief.

Accordingly, IT IS ORDERED, That the "Opposition to Applications for Certificates of Compliance and Petition for Special Relief" (CSR-198, CSR-199, CSR-200, CSR-201) filed July 31, 1972, by Rust Craft Broadcasting Company IS DISMISSED.

IT IS FURTHER ORDERED, That the "Opposition to Application for Certificates of Compliance, as Amended" filed October 12, 1972, by Gross Telecasting, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned applications (CAC-580, CAC-581, CAC-582, CAC-583) ARE GRANTED, and that appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

Today the Federal Communications Commission illustrates its contempt not only for the public, but for its own process. The majority grants certificates of compliance to Saginaw Cable TV Co., proposed operator of four new cable systems in four neighboring Michigan communities—all in the 61st television market. I dissent because the access proposals submitted by these systems do not comport with our rules.

Saginaw proposes to provide cable service from a common head-end to citizens in Saginaw (approximately 92,000 persons), Saginaw Township (approximately 27,000), Zilwaukee (approximately 2,000 persons) and the Township of Carrollton (approximately 8,500 persons). Under our rules, despite the use of a common head-end, Saginaw Cable thus proposes four separate cable systems, § 76.5(a) *Cable Television Report and Order*, 36 FCC 2d 141, 214 (1972), and each system must, according to our rules, provide each community with three separate access channels—one for the public, one for education, and one for government. See § 76.251 *Cable Television Report and Order*, 36 FCC 2d at 240-242.

Alleging that the provision of such channels would impose an undue financial burden, and arguing that the four communities have indicated no demand for separate access facilities, Saginaw Cable proposes to provide only three access channels for all four communities combined. The majority simply accepts both Saginaw's allegations and its proposal despite the fact that the systems' 26 channel capacity could (insofar as the Commission has been made aware) easily accommodate the proposed carriage of six broadcast signals plus the full panoply of access channels envisioned by our rules, and despite the fact that Saginaw Cable has introduced absolutely no evidence as to its financial situation (e.g., ownership and income), the costs of complying with our access rules, or the four communities' demands for access.

The majority relies for this result, at least in part, upon *Stark County Communications*, ——— FCC 2d ——— (1973), where the Commission granted—over my dissent—a similar waiver of our access rules. I dissented in that case because, while I believe some relaxation of our access rules might be warranted in rare circumstances

where strict compliance would clearly preclude a cable system from providing any service to the public at all, the majority could not possibly have made the requisite findings to support a waiver in that case. But, even assuming, *arguendo*, that *Stark County* was rightly decided—and assuming, therefore, that the cable systems there involved could not have afforded to provide broadcast signal carriage to the public had our access rules been fully enforced—the instant case is surely distinguishable.

Here we have four cable systems, owned by one company, which, given the facts before us, could apparently supply each of these communities with its own access channels without expanding channel capacity. (Whether or not such expansion would have been necessary in *Stark County* was not clear, though the majority apparently assumed that it would have been necessary.) Further, the relaxation of our access rules was justified in *Stark County* at least in part on the grounds that, given the very small populations in the various communities, the public's demand for access was not substantial. While the majority had absolutely no way of knowing whether such an assumption was valid in *Stark County*, it is difficult even to contemplate such an assumption in the instant case. Where, in *Stark County*, the total population to be served by all the systems did not exceed 2,000 persons, in the instant case, Saginaw Cable proposes to serve communities whose total population is over 120,000.

The majority does not perceive—let alone discuss—these differences. This is an excellent example of how this Commission relies on a bad precedent to create a truly outrageous body of law.

As I have suggested in the past, see my dissent in *Stark County Communications*, *supra*, because our cable access rules demand little capital expenditure from the cable industry, they offer the public little more than the *potential* for free and open access to what could well become the most dominant method of communication in America. While the cable industry could and should do much more to ensure the development of this potential, such potential is, itself, significant in light of the fact that America's commercial broadcasters have consistently and stubbornly refused to allow citizens the free and unfettered opportunity to communicate their ideas to their countrymen.

While my colleagues have approved the broadcast industry's stubborn refusal to live up to the demands of the First Amendment, see *Business Executives Move for Vietnam Peace*, 25 FCC 2d 242 (1970), reversed, *Business Executives Move for Vietnam Peace v. FCC*, 450 F. 2d 642 (D.C. Cir. 1971), now pending decision in the Supreme Court, they have recognized, through promulgation of our cable access rules, that the cable industry—due to its virtually unlimited channel capacity—will have to meet a higher standard. Today's action is, however, yet another step backward—a step which greatly increases the public's burden in gaining access to cable television, and which thus undermines the public's Constitutional right to free and open debate.

I dissent.

F.C.C. 73R-63

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
SALEM BROADCASTING CO., INC., SALEM, N.H.	Docket No. 19434 File No. BP-18325
NEW HAMPSHIRE BROADCASTING CORP., SALEM, N.H.	Docket No. 19435 File No. BP-18479
SPACETOWN BROADCASTING CORP., DERRY, N.H.	Docket No. 19436 File No. BP-18492
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 5, 1973; Released February 8, 1973)

BY THE REVIEW BOARD.

1. When Salem Broadcasting Co., Inc., filed its application, it revealed that one of its principals was also an officer and stockholder in Natick Broadcast Associates, Inc., which was subsequently set for consolidated hearing with another application. Thereafter, when the instant case was designated for hearing, reference was made in the Order to the Natick case. Later, the case involving Natick was concluded and the issues which had been raised against the Salem principal were resolved in his favor. Salem did not report these changes or developments by amending its application, and Spacetown Broadcasting Corporation, in the petition now before the Board,[1] argues that this failure requires the specification of a Rule 1.65 issue against Salem. The petition will be denied. In the Board's judgment, it would be carrying the requirements of Section 1.65 to ridiculous extremes to hold that a hearing issue must be specified for failure to amend an application to reveal developments that were fully reported in decisions and opinions released by various branches of the Commission's adjudicatory operations, especially under the circumstances of this case where the designation Order made specific reference to the other proceeding, and no motive for concealment exists.

2. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed by Spacetown Broadcasting Corporation on December 18, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[1] The petition was filed December 18, 1972. The Broadcast Bureau filed its opposition on January 3, 1973; Salem Broadcasting filed its opposition on January 5, 1973; and Spacetown submitted its reply on January 17, 1973.

F.C.C. 73R-62

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON D.C. 20554

In Re Applications of	
SALEM BROADCASTING CO., INC.,	Docket No. 19434
SALEM, N.H.	File No. BP-18325
NEW HAMPSHIRE BROADCASTING CORP.,	Docket No. 19435
SALEM, N.H.	File No. BP-18479
SPACETOWN BROADCASTING CORP.,	Docket No. 19436
WEST DERRY, N.H.	File No. BP-18492
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 5, 1973; Released February 8, 1973)

BY THE REVIEW BOARD.

1. Based on reporting omissions by Spacetown Broadcasting Corporation concerning the ownership interests of one of its principles, Salem Broadcasting Co., Inc., seeks addition of a Rule 1.65 issue.[1] Two grounds are alleged. One relates to the fact that the interest of Mr. Gureckis, one of Spacetown's principals, in an application for a Station in Shenandoah, Iowa, was not reported until May 1, 1970, even though the interest existed at the time Spacetown's application was filed on June 2, 1969. However, the interest was voluntarily reported more than two years prior to the filing of the subject motion, and petitioner made no effort to justify or explain the long delay in bringing this omission to the Commission's attention; accordingly this basis for enlargement will be rejected. The other ground for adding to the issues is that Spacetown delayed until October 10, 1972, reporting that the Shenandoah applicant in which Mr. Gureckis has an interest received a construction permit on November 12, 1970. Assuming that this aspect of the petition was brought to the Commission's attention in a timely fashion, the Board is of the view that this omission was not a significant one and does not support addition of an issue.

2. Accordingly, IT IS ORDERED, That the motion to enlarge issues. filed on October 25, 1972, by Salem Broadcasting Co., Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[1] The motion to enlarge was filed October 25, 1972. The Broadcast Bureau's comments and Spacetown's opposition were filed November 8, 1972.

109-027—73——9

F.C.C. 72-1154

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re request by
SCRIPPS-HOWARD BROADCASTING CO., STATION WPTV, WEST PALM BEACH, FLA.
For Interpretive Ruling Re Section 76.59 (d) (2) of Commission Rules

DECEMBER 15, 1972.

HARRY J. OCKERSHAUSEN, ESQ.
Dempsey and Koplovitz,
938 Bowen Building,
Washington, D.C.

DEAR MR. OCKERSHAUSEN: This is in reply to your letter of December 12, 1972, written on behalf of Scripps-Howard Broadcasting Company, licensee of television broadcast station WPTV, West Palm Beach, Florida. You have asked the Commission to issue an interpretative ruling that Section 76.59(d)(2) of the Commission's Rules does not authorize a cable television system to carry a network sports program of a distant network station when that program is blacked out on the network station normally carried by the system. You state that a prompt ruling is necessary because station WPTV, an NBC affiliate, being within 75 miles of Miami, will be blacked out for the December 16, 1972, Baltimore Colts-Miami Dolphins football game. Additionally, it is your understanding that WPTV will be blacked out on December 24, 1972, for the first game of the American Football Conference playoff, scheduled to be played in Miami. You state, further, that you have been informed that cable television systems in the West Palm Beach market intend to carry the December 16 Colts-Dolphins game and the December 24 playoff game by picking up the signal of a distant NBC affiliate not normally carried on the systems on the theory that Section 76.59(d)(2) authorizes such carriage. WPTV is a station normally carried on the cable systems.

Section 76.59(d)(2) authorizes cable carriage of any television station broadcasting a network program that will not be carried by a station normally carried on the system. Such carriage is authorized only for the duration of the network program not otherwise available, and prior Commission notification or certification is not required. In paragraph 19 of the *Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, 333 (1972), the Commission stated that in line with its policy of assuring the availability of all network service to all cable subscribers:

> . . . it appears appropriate to permit carriage of those programs ***offered by the network but not cleared by local affiliates.*** (footnote omitted, emphasis added)

Thus, Section 76.59(d)(2) was adopted to provide cable subscribers with programming made available to the local affiliate by the network, but where, for reasons of its own, the affiliate chooses not to air such programming.

In the case of sports blackouts, the network, pursuant to contractual agreements with the particular sports league, has not made the programming available to the affiliate, and, in turn, it is not within the affiliate's discretion whether to air the program. In short, the programming is neither offered by the network nor can it be cleared by the affiliate. Accordingly, the importation of a distant network television station not normally carried on the system, which is broadcasting a professional sports program that is being blacked out pursuant to league-network contract on network stations normally carried on the cable system, is not authorized by Section 76.59(d)(2).

We trust that the foregoing adequately supplies the information sought in your letter of December 12, 1972.

Commissioner Johnson dissenting; Commissioners H. Rex Lee and Hooks absent.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
JAMES L. HARRISON, JACKSONVILLE, FLA.
Concerning Section 315, Equal Opportunities Re Station WJXT(TV)

FEBRUARY 2, 1973.

Mr. JAMES L. HARRISON,
c/o MacLean and Brooke,
Post Office Drawer X,
Jacksonville, Fla.

DEAR MR. HARRISON: This refers to your complaint dated October 13, 1972, against WJXT(TV), Jacksonville, Florida. You state that you were a legally qualified candidate in the Democratic Primary (held September 12, 1972) for the office of State Attorney, Fourth Judicial Circuit; that you had intended to broadcast political spot announcements on station WJXT; that your advertising campaign was to be handled by Mr. Robert N. Dow, Jr., who was preparing these announcements; that WJXT notified Mr. Dow by letter dated July 28, 1972, that time for spot announcements had not been allotted for the State Attorney's race although free time would be made available to you and your opponent on the "At Issue" show; that on August 2, 1972, Mr. Dow called Mr. Harry Kalkines, the station's sales manager, concerning WJXT's decision not to sell spot announcements to the State Attorney candidates, but was told by Mr. Kalkines that as far as he knew the decision was final; that on September 10, 1972, two days before the primary election, Mrs. Harrison observed a political spot announcement on WJXT by Mr. Don Nichols, your opponent in the primary; that the following day, September 11, Mr. Dow called the station and was informed by Mr. Kalkines that the station's earlier decision not to sell spot announcements to the State Attorney candidates was an oversight and that spots had been made available upon request; and that Mr. Kalkines apologized for the mixup and indicated he would have sold spots to you if there had been a request, but in checking the log found no such request had been made by Mr. Dow on your behalf. You state that this action had an effect on your attempt to get elected, and seek a Commission ruling on the actions taken by the station.[1]

In response to a Commission inquiry, in a letter dated October 5, 1972, the station's Vice-President and General Manager, Mr. Robert W. Schellenberg, states that the July 28, 1972 letter "inadvertently omitted" the State Attorney candidates from the list of those races which

[1] In response to oral inquiry, counsel for Mr. Harrison stated that Mr. Dow did not on September 11 attempt to buy time for Mr. Harrison because the station's policy was to refuse to sell time to candidates on the day before the election. Counsel for WJXT agreed that the station had a policy of not selling time to political candidates on the day before the election, and that no time was offered to Mr. Harrison on September 11.

would be sold spot announcements. Mr. Harry Kalkines states the following in regard to the content and communications surrounding the July 28 letter:

Shortly after July 28, I was called by Mr. Robert Dow, a partner in the local advertising agency of Hubbard, Duckett, Mason, Dow, Inc. I do not recall Mr. Dow's asking about the purchase of time for candidates for State Attorney, Circuit 4. However, he may have and, if he did, I would have relied on Mr. Mosby's July 28 letter which set forth the amount of time available with respect to each office, but did not name State Attorney. I am sure that Mr. Dow did not state that he represented any particular candidate with regard to the State Attorney race or any other race. Indeed, if he had done so, I would have made a record of the inquiry on the station's form for requests for political time, because this is station policy and my invariable practice with respect to requests for political time. It is not unusual for an advertising representative to ask about political availabilities before he formally represents a candidate or without stating whom he represents.

Early in the week of August 7, I asked Mr. Mosby, who had been on vacation from July 29 through August 6, why the station did not sell time to candidates for State Attorney, Circuit 4. I pointed out that Attachment B to Mr. Mosby's July 28 letter to the candidates indicated that free time would be offered to candidates for State Attorney; but Attachment A, which listed the amount of time that would be made available for sale to candidates for each office, did not refer to State Attorney. Mr. Mosby stated that the omission of State Attorney from Attachment A was an oversight. We discussed which category in Attachment A State Attorney should be included in and decided that it should be included in Group III. At the time of my conversation with Mr. Mosby, I did not have in mind any earlier conversation with Mr. Dow, although it is not unlikely that the omission of State Attorney from Attachment A had been called to my attention by Mr. Dow and that this resulted in my bringing it up with Mr. Mosby when Mr. Mosby returned from vacation. In any event, if Mr. Dow had stated that he was making a request on behalf of a candidate, I would have had a record of the request and would have called him after my conversation with Mr. Mosby to offer to sell time to the candidate represented by Mr. Dow.

The licensee further states that Mr. Nichols was sold time pursuant to a specific August 15 request on his behalf; and that the station has no record of a specific request by you or your advertising agent, Mr. Dow. In addition, the licensee submitted an affidavit by Mr. Jan Fisher in which he states that on August 10, after the taping of the "At Issue" show, you questioned him about WJXT's July 28 decision not to sell spot announcements and that he told you that he "was unaware that there was such a policy and suggested you call the station" management; and that you indicated at that time you would call the station manager to clarify the matter. The licensee states that to its knowledge no call was received: however, it also states that it should have notified both candidates of the change in policy, but states that it is the individual candidate's obligation to make requests and monitor the station for Section 315 violations.

In reply to the station's response, affidavits were submitted by Mr. Dow and you which you state controvert the affidavits submitted by Messrs. Kalkines and Mosby of Station WJXT. Mr. Dow states:

On the morning of August 2, 1972, I talked by phone to Mr. Jim Harrison, who at that time had a copy of the WJXT, Channel 4 written statement dated July 28, 1972 in front of him, and we discussed the omission of the State Attorney's race. As a result of this conversation, I was requested by him to check with the station to verify the omission. As set forth in the final paragraph of the July 28, 1972 written statement that all contact was to be made with Harry Kalkines, the station's sales manager, I called Mr. Kalkines, whom I have known for some 15 years. After identifying myself, I said that the agency was handling Jim

Harrison in the State Attorney's race and I noted that the State Attorney's race was not allocated time for purchase on Attachment A of the July 28, 1972 letter. Mr. Kalkines' answer was that because the State Attorney's race was not listed on Attachment A, there were no spots available for that race. I asked why the decision was made to exclude the race and Mr. Kalkines replied that he didn't know why the decision was made, he just worked there and if the race was not listed on Attachment A there were no spots available.

In summary, the licensee and the complainant agree that in its original letter to the two candidates for State Attorney the licensee indicated that no time would be sold to either candidate; Mr. Dow states that during a telephone conversation with him on August 2, Mr. Kalkines verified this refusal to sell time; Mr. Kalkines states that he does not recall Mr. Dow's asking about purchase of time for State Attorney candidates, "although it is not unlikely" that Mr. Dow did ask, and that if he did, Mr. Kalkines would have confirmed the written announcement that such time would not be sold; Mr. Dow states that during this conversation he informed Mr. Kalkines, in connection with the inquiry about availability of time, that Mr. Dow's advertising agency was representing Mr. Harrison in the race; Mr. Kalkines states that if Mr. Dow had done so, Mr. Kalkines would have made a record of a request for political time on the appropriate station form; licensee states that after Mr. Kalkines brought to its attention the omission of State Attorney candidates from its list of those eligible to buy time it was determined that such time should be sold, because the omission was an oversight; later, Candidate Nichols, opponent of Mr. Harrison, asked to buy time on WJXT and was sold time but WJXT did not notify Mr. Dow or Mr. Harrison of this fact or the fact that time was now being sold to State Attorney candidates; on the basis of the station's original written announcement and (according to Mr. Dow) on the basis of his conversation of August 2 with Mr. Kalkines, no attempt was made by Mr. Harrison to buy time; Mr. Harrison learned on Sunday, September 10, that Mr. Nichols was buying time on WJXT; Mr. Dow made inquiry of the station the next day and learned for the first time that the originally stated policy had not been followed; however, since the station does not sell time to candidates on the day preceding election day (in this case the election was on September 12), Mr. Harrison did not ask to buy time on the one remaining day, September 11, the licensee provided free time to both candidates on its "At Issue" program broadcast on August 12; according to an affidavit by Mr. Jan Fisher, WJXT newsman, he suggested to Mr. Harrison during a discussion after the taping of this program on August 10 that he call the station manager about the refusal to sell time to State Attorney candidates, but the licensee states that Mr. Harrison did not do so.

The licensee acknowledges that it should have notified both candidates of the change in its previously announced policy. It is obvious that the licensee should have done so, particularly after selling time to one candidate, since such sale without notice to the other candidate that the licensee's stated policy had changed left him in a disadvantageous position, and constituted a violation of Section 73.657(a)(2) of the Commission's Rules, which prohibits discriminating between candidates "in charges, practices, regulations, facilities or services," or the making or giving of "any preference to any candidate

for public office," or subjecting "any such candidate to any prejudice or disadvantage."

There is no evidence, however, that the licensee intentionally discriminated against Mr. Harrison and in the absence of such evidence, further Commission action does not appear warranted. However, the Commission expects the licensee hereafter to exercise special diligence to assure that its policies regarding availability of time are clearly stated to all candidates and to assure that any change in announced policies is promptly communicated to all affected candidates, in order to prevent future discrimination.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ROBERT E. O'DONNELL, BROOKLYN, N.Y.
Concerning Section 315, Political Broadcast and Fairness Doctrine Re Stations
WCBS, WPIX, and WABC

FEBRUARY 5, 1973.

MR. ROBERT E. O'DONNELL,
1769 East 31st Street,
Brooklyn, N.Y.

DEAR MR. O'DONNELL: This refers to your complaint against three New York television stations—WCBS, WPIX and WABC—alleging that as a qualified, bona fide candidate for the Democratic nomination, you were denied news coverage during the primary campaign for a seat in New York's 16th Congressional District. You request that the Commission "investigate the methods of news coverage during the primary campaign, the so-called 'contacts' of newsmen which pre-determine which candidate will be covered, the relationships of news facts vs. opinions and how the latter is passed to viewers as the former, and the right of TV stations to omit candidates at will from news programs in violation of the F.C.C. Fairness Doctrine."

You contend (a) that WCBS–TV on Wednesday, June 14 on the 6:00 p.m. news report broadcast filmed segments of the two other candidates, Congressman Emanuel Celler and Ms. Elizabeth Holtzman; that after a complaint by you, WCBS–TV broadcast, on the 11:00 p.m. news report of the same date, a statement of your candidacy; that on Thursday, June 15, you were informed that no further mention of your campaign was going to be made by the station; (b) that WPIX–TV on Tuesday, June 13 on the 10:00 p.m. news broadcast filmed interviews with Mr. Celler and Ms. Holtzman; that after a complaint was made about this, your candidacy was reported on Wednesday, June 14 on the 10:00 p.m. news; that on Sunday, June 18, at 10:30 p.m. on a 30-minute primary special, pictures of Mr. Celler and Ms. Holtzman were aired, along with a map showing that they were the Democratic candidates in the 16th Congressional District race; and (c) that WABC–TV on Tuesday, June 20 on the 6:00 p.m. news presented a rundown of candidates in each congressional district, and, for the 16th Congressional District, your name was omitted.

As you may know, the selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material. In keeping with the longstanding principle of licensee programming, responsibility and discretion, with regard to your request that the Commission investigate the stations' news coverage, the Commission will not substi-

tute its news judgment for that of a broadcaster, absent extrinsic evidence of deliberate distortion. *Democratic National Convention Television Coverage*, 16 FCC 2d 650 (1969); *Columbia Broadcasting System* ("Hunger in America"), 20 FCC 2d 143 (1969); *Letter to Mrs. J. R. Paul*, 26 FCC 2d 591 (1969). Such extrinsic evidence has not been furnished here. As to your allegation that opinions are presented to viewers as facts, neither the Communications Act nor the Commission's Rules require the separation of interpretive comment from news. The individual broadcast licensee is not required to label programs which interpret the news or contain expressions of opinion. Legislation designed to require broadcasters to identify the nature and source of and responsibility for editorial and interpretive comments has been considered by both Houses of Congress in the past, but none has been enacted.

The fairness doctrine, to which you refer, provides that where a licensee presents a discussion of one side of a controversial issue of public importance, an obligation arises to afford reasonable opportunities for the presentation of opposing views. Under the fairness doctrine, the licensee must make a good faith judgment as to what the needs and interests of his particular community call for with respect to the presentation of a particular controversial issue, the sides to be presented, the format to be used and the particular persons to present contrasting views.

It appears that the controversial issue of public importance involved here was who should be elected the Democratic nominee for a seat in New York's 16th Congressional District. Although you allege that you have not been provided with as much coverage as the two other candidates, you have cited only one or two news programs on WCBS–TV and WPIX–TV in which your opponents were discussed. You also cite the instances when your candidacy was reported by WCBS–TV (Wednesday, June 14, on the 11 p.m. report) and by WPIX–TV (Wednesday, June 14, on the 10:00 p.m. news). Under these limited circumstances, it does not appear that the Commission has a basis for concluding that either licensee has failed to comply with the fairness doctrine.

As to WABC–TV, you refer to only one program concerning the primary elections, the one in which you state that your name was left off a chart displaying the various candidates running in each district. You have furnished no other information concerning WABC–TV's coverage of your campaign at other times. From your description of that one program,[1] it does not appear that there was any discussion of the merits of the 16th District Congressional race, but merely a listing of the candidates, and therefore no fairness doctrine obligation would attach to such a brief presentation. Moreover, as indicated above, the Commission does not review licensee's news presentations. Accordingly, no Commission action appears warranted at this time.

[1] You state:

On the evening of June 20, 1972 (Tuesday), WABC–TV, Channel 7, New York, provided as part of its highly rated news program "EYEWITNESS NEWS" a rundown of the candidates and districts in the various primary contests in New York City. The information was prepared on a large printed chart and read simultaneously by newsman Robert Lape. The information about the contest in the 16th Congressional District, Brooklyn, read "EMANUAL CELLER VS. ELIZABETH HOLTZMAN." *NO* mention was made of Robert O'Donnell. His name was *not* included on the printed chart.

We regret that we are just now able to respond to your letter, but the staff was for many months swamped with complaints and inquiries related to the 1972 primaries, conventions and general elections, which would have become moot unless they were resolved at once. Therefore, it was necessary to postpone consideration of your complaint, which involved post-election matters, that normally we would have dealt with much earlier.

Enclosed for your further information are copies of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance," and Public Notices of August 7, 1970 and March 16, 1972, entitled "Use of Broadcast Facilities by Candidates for Public Office."

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73-4

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
RECEIVER CERTIFICATION RESCINDED FOR NON-PAYMENT OF GRANT FEE

JANUARY 5, 1973.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), ROBERT E. LEE, JOHNSON, H. REX LEE, REID, WILEY AND HOOKS, ISSUED THE FOLLOWING PUBLIC NOTICE.

RECEIVER CERTIFICATION RESCINDED FOR NONPAYMENT OF GRANT FEE

On April 11, 1972, the Commission granted certification to Sona Labs, Inc., 369 St. Marks Ave., Brooklyn, N.Y. 11328 for a land mobile communications receiver Model No. RAS 10 operating in the 152–174 MHz band, described in the application for certification as "FM Scanner Monitor receiver". The application for certification was signed by Herman R. Campbell who indicated he was President of Sona Labs, Inc.

Section 1.1120 of the Commission's rules, 47 CFR Section 1.1120, requires a grant fee, in the amount of $25.00, for certification of equipment of the kind for which certification was granted to Sona Labs, Model RAS 10.

Section 1.1102 of the Commission's rules, 47 CFR Section 1.1102, provides that where a grant fee is prescribed, the fee is payable within 45 days after the date of the grant. That section further provides:

> **All grants, approvals, and authorizations issued by the Commission are made subject to payment and receipt of the applicable fee within the required period. Failure to make payment of the applicable fee to the Commission by the required date shall result in the grant, authorization or approval becoming null and void and ineffective after that date.**

Sona Labs, Inc., has not paid the grant fee required by Sections 1.1102 and 1.1120.

Attempts by the Commission to contact the applicant, Sona Labs, Inc., have proven unsuccessful. The applicant is no longer located at the address and telephone number given in the application, nor was any forwarding address or telephone number provided. We have also unsuccessfully attempted to contact Mr. Herman Campbell. In addition the Commission has been informed that Sona Labs, Inc., has filed bankruptcy proceedings, but we have been unable to determine if this is in fact true and if so in what court such proceedings have been initiated.

For the foregoing reasons, the Commission hereby gives notice that the certification granted to Sona Labs, Inc., on April 11, 1972, for its Model RAS 10 land mobile communications receiver is rescinded. Marketing of this equipment without certification will be in violation of Section 2.803 of the Commission's rules, 47 CFR Section 2.803.

F.C.C. 73R-68

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ST. CROSS BROADCASTING, INC., SANTA CRUZ, CALIF.	Docket No. 19503 File No. BP-18014
JAMES B. FENTON, GRANT R. WRATHALL, JR., LAWRENCE M. WRATHALL AND LORETTA WRATHALL, D.B.A. PROGRESSIVE BROADCASTING CO., APTOS-CAPITOLA, CALIF.	Docket No. 19506 File No. BP-18221
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 12, 1973)

By THE REVIEW BOARD.

1. Before the Review Board is an appeal pursuant to Section 1.301 (a) (4) of the Rules,[1] filed January 9, 1973, by the Broadcast Bureau.[2] In his Memorandum Opinion and Order, FCC 72M-1595, released January 2, 1973, the Administrative Law Judge granted a joint petition and approved an agreement between the above-captioned applicants, including provisions in that agreement for reimbursement to St. Cross Broadcasting, Inc. (the dismissed applicant) of amounts expended in the prosecution of its application. The Broadcast Bureau, in its appeal argues that since a petition to enlarge issues pending before the Review Board alleges, *inter alia*, that St. Cross has misrepresented facts to the Commission,[3] the Presiding Judge could not properly grant the joint request absent a condition that reimbursement would be allowed only if (a) the Board denies the petition or (b) St. Cross establishes that it has not made misrepresentations to the Commission, if the Board adds the issue.

2. The Review Board will grant the Broadcast Bureau's appeal. Clearly, when a character issue is outstanding against an applicant, reimbursement of that applicant will not be allowed until there is a satisfactory resolution of that issue. See, *e.g.*, *Berwick Broadcasting Corp.*, 14 FCC 2d 132, 13 RR 2d 1073 (1968). Equally clear is the corollary that an applicant cannot avoid the effects of an adverse resolution of a character issue by agreeing to dismissal of its application between the times a petition to add a character issue is filed and action on that petition. Although dismissal of applications pursuant to joint agreements has been allowed where reimbursement is held in abeyance pending resolution of an outstanding character question,

[1] Rule 1.301(a)(4) provides that rulings granting a joint request filed under Section 1.525 without terminating the proceeding are appealable by any party as a matter of right.
[2] No pleadings have been filed in response to the Bureau's appeal.
[3] In the motion to enlarge issues, filed August 2, 1972, Progressive Broadcasting Company alleges that St. Cross has submitted false financial statements of its principals.

the subject agreement does not provide for dismissal without compensation and therefore the agreement cannot be approved.

3. Accordingly, IT IS ORDERED, That the appeal from Presiding Judge's Order, filed January 9, 1973, by the Broadcast Bureau, IS GRANTED; that the Order of the Administrative Law Judge granting joint request for approval of agreement, FCC 72M–1595, released January 2, 1973, IS SET ASIDE; and that the joint request for dismissal of application and approval for partial reimbursement of expenses, filed by the applicants on December 5, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-73

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ST. CROSS BROADCASTING, INC., SANTA CRUZ, CALIF. JAMES B. FENTON, GRANT R. WRATHALL, JR., LAWRENCE M. WRATHALL AND LORETTA WRATHALL, D.B.A. PROGRESSIVE BROADCASTING CO., APTOS-CAPITOLA, CALIF. For Construction Permits	Docket No. 19503 File No. BP-18014 Docket No. 19506 File No. BP-18221

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 12, 1973)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER CONCURRING IN RESULT

1. Before the Review Board for consideration is a motion to enlarge issues, filed August 2, 1972, by Progressive Broadcasting Company (Progressive), seeking the addition of financial, misrepresentation and Rule 1.65 issues against St. Cross Broadcasting, Inc. (St. Cross).[1] [2]

2. The pertinent facts, as alleged by the petitioner, are not in dispute. On December 20, 1971, St. Cross filed an amendment to its application, which had been filed in 1967, containing statements of loan commitments by principals and financial statements of those principals. William A. Anderson, 63% owner of St. Cross, pledged a total of $72,245 to St. Cross.[3] His financial statement claimed a net worth of $1,637,641 and total assets of $1,643,841, of which $1,204,395, or approximately 75% is listed as stock, notes and interest due on notes of Telfon Communications Corporation (Telfon). E. Kersh Walters, Jr., 15.5% owner of St. Cross, pledged a total of $10,124. His financial statement claims a net worth of $292,259 and total assets of $295,159, of which $209,159, or 70%, is listed as being in Telfon. Gerald E. Berman, 9% owner of St. Cross, pledged $6,749. His financial statement claims a net worth of $178,733 and total assets of $183,733, of which $94,733, or 50%, is listed as being in Telfon. St. Cross states in

[1] Also before the Board are: (a) Broadcast Bureau's comments, filed August 24, 1972; (b) opposition, filed August 24, 1972, by St. Cross; (c) reply, filed August 30, 1972, by Progressive; (d) motion for leave to file pleading and reply to (a), filed September 12, 1972, by St. Cross; (e) motion to strike unauthorized pleading, filed September 18, 1972, by the Broadcast Bureau; (f) opposition to (d), filed September 22, 1972, by Progressive; and (g) reply to (f), filed October 5, 1972, by St. Cross. St. Cross' motion for leave to file pleadings will be denied. The information in its supplementary pleading was available to St. Cross at the time it filed its opposition, and St. Cross has not demonstrated good cause for its untimely submission.

[2] Progressive's motion to enlarge is admittedly untimely. While its claim for good cause is tenuous, we find that the public interest questions raised in its petition are substantial and will consider the motion on its merits. See *The Edgefield-Saluda Radio Co.* (*WJES*), 5 FCC 2d 148, 8 RR 2d 611 (1966).

[3] The pledged amounts stated are the sums of both pre-incorporation subscriptions of stock and loan commitments.

its pleadings that on December 10, 1971, Telfon determined to file a petition for an arrangement under Chapter Eleven of the Bankruptcy Act and that on January 24, 1972, Telfon's application to sell its operating assets was granted by the Referee in Bankruptcy and Telfon was adjudicated bankrupt. The bankruptcy proceeding was not reported to the Commission. On May 17, 1972, the Commission adopted the designation Order in these proceedings (FCC 72–422, 37 FR 10611, published May 25, 1972), finding St. Cross financially qualified and denying a petition, filed June 18, 1969, by Monterey Peninsula Broadcasters, Inc., to specify a financial qualifications issue against St. Cross. Finally, on September 5, 1972, St. Cross filed an amendment deleting reference to Telfon in the financial statements of the St. Cross principals.

3. Progressive contends that the above facts establish that Anderson and Walters were committed to loan the prospective licensee money to operate, knew of information relating to substantial changes which had occurred in their financial situations, and did not inform the Commission of those changes. Alleging that Question 10(f) of Section II of the Commission's application form specifically requires that such information be given the Commission,[4] movant claims that St. Cross has violated Section 1.65 of the Rules.[5] Progressive maintains that, despite the existence of other assets which may enable Anderson and Walters to meet their commitments, a question is nevertheless raised as to the character qualifications of St. Cross because of its apparent misrepresentations to the Commission. The Broadcast Bureau agrees with Progressive that the Commission's application form requires St. Cross to notify the Commission when a corporation controlled by one of St. Cross' principals (the Bureau alleges that Anderson owns 70% of Telfon) files a petition for an arrangement under the Bankruptcy Act. In the absence of such an amendment, the Bureau urges, substantial questions regarding St. Cross' candor with the Commission and compliance with the requirements of Rule 1.65 are raised. The Bureau does not support addition of a financial issue against St. Cross, since the balance sheets of Anderson and Walters do apparently reflect enough other assets to meet their commitments. The Bureau suggests, however, that the applicant submit current audited financial statements for both Anderson and Walters.

4. In opposition, St. Cross alleges that the balance sheets of Anderson and Walters reflect that each has sufficient current liquid assets above current liabilities to meet his commitment to St. Cross. Since neither of those principals relied on Telfon stock to meet his commitment, St. Cross claims, failure of that corporation is not of substantial importance. Moreover, St. Cross contends, since Telfon was neither an applicant nor a party to the application, such information was not required to be reported by FCC Form 301. In reply, Progressive main-

[4] FCC Form 301, Section II, Question 10(f) states: "Have voluntary proceedings in bankruptcy been instituted by, or have involuntary proceedings in bankruptcy ever been brought against applicant or any party to this application.

[5] Section 1.65 requires that an applicant amend its application whenever the information contained therein is no longer substantially accurate and complete, and to notify the Commission whenever there has been a substantial change as to any other matter which may be of decisional significance. The applicant should do so as promptly as possible and in any event within 30 days, unless good cause is shown.

tains that whether the financial qualifications of St. Cross were affected by the bankruptcy of Telfon is "irrelevant to a violation of Section 1.65," which only requires that substantial changes in information on file with the Commission be reported within 30 days. Progressive also agrees with the Broadcast Bureau that complete reporting of the financial status of parties to an application must include information with respect to other corporations controlled by those parties.

5. The Review Board finds that the pleadings before it raise a substantial question of misrepresentation to the Commission. It is clear that St. Cross relies upon its principals for its total financial support and that the financial statements of those principals submitted to the Commission to support their claimed ability to do so showed substantial assets which, in fact, did not exist at the time those statements were submitted. Such apparent misstatement raises a sufficient question to warrant the inclusion of an issue in this proceeding to determine whether St. Cross has misrepresented material facts to the Commission. *Cf. WIOO, Inc.*, 37 FCC 2d 140, 25 RR 2d 169 (1972). It is axiomatic that the regulatory scheme administered by the Commission must depend on the integrity of the applicants before the Commission and the accuracy of the information supplied by them. Thus, contrary to St. Cross' arguments, "no showing of materiality, advantage or that the Commission was, in fact, mislead is necessary for a finding of misrepresentation." *Seaboard Broadcasting Corp.*, 26 FCC 2d 649, 651, 20 RR 2d 786, 789 (1970). It is well established that a finding merely that true information is withheld and false information is substituted is enough to disqualify an applicant. See *FCC* v. *WOKO, Inc.*, 67 S.C. 213, 329 U.S. 223 (1946) and *Seaboard Broadcasting Corp., supra.* This is particularly true where the Commission's application form specifically calls for such information. (See FCC Form 301, Section III, Item 4).

6. We also disagree with St. Cross with regard to the materiality of the false information apparently submitted. We do deem a misrepresentation to be significant and material when 75%, 70% and 50% of the assets shown by an applicant's principals are virtually nonexistant, especially where the Commission contemporaneously has before it a petition to deny which is based, in part, on allegations regarding the financial status of the applicant. In such circumstances, the questions of whether the Commission ultimately would have added an issue had it possessed the correct information and whether other assets are sufficient to meet commitments to the applicant are not controlling. Furthermore, it is clear that St. Cross did not report the changes in the financial status of its principals within 30 days. Such changes are, in our view, substantial and may be of decisional significance and therefore, whether or not specifically required by the application form, must be filed pursuant to Section 1.65. See paragraph 7 of *Report and Order, Reporting of Changed Circumstances Affecting Applications*, FCC 64–1037, 3 RR 2d 1622. We will therefore specify the appropriate issue. Finally, the Board is of the view that neither Progressive nor the Broadcast Bureau has alleged facts

sufficient to indicate that St. Cross does not have sufficient current liquid assets to build and operate its proposed station for one year.[6]

7. Accordingly, IT IS ORDERED, That, the motion to strike unauthorized pleading, filed September 18, 1972 by the Broadcast Bureau, IS GRANTED, and the motion for leave to file pleading, filed September 12, 1972, by St. Cross Broadcasting, Inc. IS DENIED and the reply to comments of Broadcast Bureau, filed September 12, 1972, by St. Cross Broadcasting, Inc. IS DISMISSED; and

8. IT IS FURTHER ORDERED, That the motion for waiver of Section 1.229 and motion to enlarge issues, filed August 2, 1972, by Progressive Broadcasting Company, IS GRANTED to the extent indicated below, and IS DENIED in all other respects; and

9. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED by the addition of the following issues:

(a) To determine whether St. Cross Broadcasting, Inc. and/or any of its principals misrepresented facts to the Commission and, if so, the effect thereof on the qualifications of the applicant to be a broadcast licensee;

(b) To determine whether St. Cross Broadcasting, Inc. has complied with the provisions of Section 1.65 of the Commission's Rules by keeping the Commission advised of substantial changes in the financial status of its principals and, if not, the effect of such non-compliance on the basic or comparative qualifications of the applicant to be a broadcast licensee;

10. IT IS FURTHER ORDERED, That the burden of proceeding under the above SHALL BE on Progressive Broadcasting Company, and the burden of proof under the above issues above SHALL BE on St. Cross Broadcasting, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[6] We do note, however, that the September 5, 1972, amendment deleting reference to Telfon in the principals' financial statements includes references to a partnership formed by, *inter alia,* Anderson and Berman. Should this new enterprise significantly affect the principals' financial status, we would expect that information to be submitted pursuant to Section 1.65.

109-027—73——10

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
SUMTER BROADCASTING CO., INC.
For a Construction Permit for a new
Class A FM Station at Americus, Ga.

FEBRUARY 1, 1973.

AMERICUS, GA., APPLICATION FOR NEW FM STATION GRANTED

An application by Sumter Broadcasting Company, Inc. for a construction permit for a new Class A FM station to operate on Channel 249 (97.7 MHz) at Americus, Ga., has been granted by the Commission (BPH–7775). The station will operate with power of 3 kw and antenna height of 300 feet. Sumter Broadcasting is the licensee of station WISK, Americus. One of its principals, L. E. Gadrick (secretary, treasurer, director and 50 percent stockholder) owns WPLK, Rockmart, Ga., and has a 75 percent interest in WIYN, Rome, Ga. The grant of the application was made without prejudice to whatever action the Commission may consider appropriate in light of its action with respect to outstanding complaints against stations WIYN and WPLK. (Action by the Commission January 23, 1973. Commissioners Burch (Chairman), Robert E. Lee, Reid and Wiley, with Commissioners Johnson and H. Rex Lee dissenting and issuing statements, and Commissioner Hooks dissenting.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

Prior to last December 26, 1972, it had never been the practice of this Commission to grant or assign a license or construction permit to an applicant whose basic qualifications were being questioned in other Commission proceedings. On that date, in an appalling opinion that clearly violated § 309 of the Communications Act of 1934, the majority voted to allow RKO General to acquire another radio station "despite the fact that RKO's qualifications as a broadcast licensee have been called into serious question—and are currently unresolved—by this very Commission." See my dissenting opinion in *Assignment of WAXY-FM*, ——— F.C.C. 2d ——— or ——— Pike & Fisher R.R. 2d ——— (December, 1972).

Standing by itself, the WAXY decision might have been dismissed as a temporary aberration in the Commission's judgment. Today's decision, however, evinces an unmistakable intention on the part of the majority to establish a precedent that would simply emasculate the already precarious "public interest" in all proceedings involving the qualifications of a licensee.

It is one thing, of course, to eschew the phrase "public interest, convenience or necessity" as so ambiguous as to easily encompass a wide range of potential Commission actions. It has, indeed, become fashionable to so interpret Justice Frankfurter's famous elucidation of that standard, which concluded:

> The touchstone provided by Congress was "the public interest, convenience or necessity," a criterion which is "as concrete as the complicated factors for judgment in such a field of delegated authority permits."

NBC vs. United States, 319 U.S. 190, at 216 (1943). See, for example, Professor Harry Kalven's ruminations in "Broadcasting, Public Policy and the First Amendment," 10 *J. Law & Econ.* 15, 25–26, 41–45 (1967). There is no reason to assume, however, that the standard is so nebulous or so wanting of coherent construction as to encourage the apparent abandon we find in these cases.

Today's decision involves the grant of a construction permit for a new FM facility in Americus, Georgia, to the Sumter Broadcasting Company. Sumter is owned in equal share by two men, one of whom, L. E. Gradick, is also a 75% owner of the licensee of station WIYN (AM), Rome, Georgia, and 100% owner of station WPLK(AM), Rockmart, Georgia. WIYN was the subject of a July, 1971 Notice of Apparent Liability for forfeiture of $1000 for violation of the personal attack rule. In addition, the Broadcast Bureau has received no fewer than four separate complaints against WIYN alleging other numerous violations of our personal attack rules and the fairness doctrine including one complaint that named WPLK as well. These charges include the failure to provide a reasonable opportunity to reply to one alleged attack, failure to notify another group that it had been attacked or to provide time, and other allegations said to be of such serious nature that a complete Bureau investigation has been ordered. Violation of the personal attack doctrine is a serious offense which has been found in the past to go to the very heart of a licensee's qualifications to use the public airwaves. *Brandywine-Main Line Radio, Inc., for Renewal of Licenses of Stations WXUR and WXUR-FM, Media, Pa.*, 24 F.C.C.2d 18 (1970), *aff'd*, *Brandywine-Main Line Radio, Inc. v. F.C.C.*, ——— F.2d (Sept., 1972).

Under previous Commission policy, the Broadcast Bureau indicates that this case would never have been brought to our attention at this time, but rather held in abeyance until such time as the WIYN and WPLK charges had been acted upon. However, citing the authority of *WAXY* and the "informal" mandate handed them by the Commission at that time to "bring up" other such cases, Sumter's application has been processed by that Bureau and is now summarily granted by the majority, subject only to the "condition" that it might be *re*examined after the final resolution of those outstanding charges.

Of course, this method of regulation is absurd. As any student of administrative law can tell you, it is a rare commission or agency that has enough integrity to reverse more than one or two of its decisions a year. Any process of "re-examination", even based upon the occurrence of some specified condition, implies that a decision has already been made. Aside from the purely legal changes that occur in the rights and obligations of grantee and Commission alike, when a party has been licensed or granted some sort of permission to proceed with a commit-

ment of its resources, bureaucratic inertia is most often an insurmountable obstacle to reasoned reconsideration. Since the majority refused the suggestion that its grant in this case be made *automatically* conditional upon the outcome of the personal attack complaints, I would say that Mr. Gradick is safely in possession of a construction permit, with the clear implication that he is qualified in every way to hold one.

There is an important and dangerous line of precedent that has been established by these two cases (and by the large number of other, similar cases the Broadcast Bureau has been informally told to start bringing up). It begins to appear that a licensee whose qualifications are being challenged in one proceeding can procure a *de facto* adjudication in his favor by the simple expedient of applying for (and being granted) some additional license or permit while the former case is still pending. At the very least, he can create a good deal of momentum in his direction. There can be no question but that a ruling favorable to a licensee on any issue relating to his overall broadcasting qualifications must in some way prejudice the attempt to build a case against him in any other such matter before the Commission.

What the majority has accomplished today is far more than just the promulgation of yet another piece of bad law or bad policy; sorrowfully, it is the utter subversion of much of what is left of the orderly processes under which this Commission is supposed to uphold the public interest. If we can grant new licenses and permits to parties who are charged with serious personal attack and fairness violations (as in this case) or with significant antitrust allegations (the RKO–WAXY case), can we ever again deny an unchallenged application, without seeming arbitrary and capricious in the extreme? Congress itself could not have caused a greater degree of chaos for our procedures of factfinding, adjudication and review if it had repealed the public interest standard itself.

I dissent.

Dissenting Statement of Commissioner H. Rex Lee

I dissent to the conditional grant of the application of Sumter Broadcasting Co., Inc. for a construction permit for a new Class A FM broadcast station at Americus, Georgia, for essentially the same reasons articulated in my statement concerning the assignment of Station WAXY–FM, Fort Lauderdale, Florida, to RKO General, Inc.[1] One of the principals of the corporate applicant has substantial ownership interests in two Georgia standard broadcast stations,[2] which have either been subject to a forfeiture notice or been the target of pending complaints relating to alleged violations of the Commission's personal attack rule (section 73.123) and Fairness Doctrine. As a result, final action on Sumter's FM application should be deferred by the Commission pending ultimate resolution of outstanding matters that could have a real bearing on the assessment of the applicant's

[1] See FCC 72–1201, 26 RR 2d 228, relating to conditional grant of the application for assignment of the license of Station WAXY–FM, Fort Lauderdale, Florida, from Broward County Broadcasting Company to RKO General, Inc.

[2] I. E. Gradick is secretary-treasurer, director and 50 percent stockholder of Sumter Broadcasting Co., Inc. and is 100 percent owner of Station WPLK, Rockmart, Georgia, and 75 percent owner of Station WIYN, Rome, Georgia.

requisite qualifications. As I noted in my dissenting statement in the *RKO General* case, whether or not a licensee's conduct is of sufficient gravity to warrant revocation or denial of renewal, it is critical in determining whether a licensee should be entrusted with an additional broadcast facility.

F.C.C. 73-61

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of: TELEMUNDO, INC., MAYAGUEZ, P.R. Request for Emergency Authorization Pursuant to Section 309(f) of the Communications Act of 1934, as Amended	File No. BPTT-2452

MEMORANDUM OPINION AND ORDER

(Adopted January 17, 1973; Released January 24, 1973)

BY THE COMMISSION.

1. The Commission has before it for consideration its action of November 15, 1972, in the above-captioned matter (FCC 72-1023, released November 21, 1972), granting emergency special temporary authority, pursuant to section 309(f) of the Communications Act of 1934, as amended, to Telemundo, Inc., licensee of television station WKAQ-TV, channel 2, San Juan, Puerto Rico, to construct and operate a 100-watt UHF television broadcast translator station to serve Mayaguez, Puerto Rico, by rebroadcasting station WKAQ-TV on output channel 22, pending Commission action on Telemundo's application (BPTT-2452) for regular authority to construct and operate a 1,000-watt UHF translator on channel 22 in Mayaguez. On November 17, 1972, Quality Telecasting Corporation, licensee of station WORA-TV, channel 5, Mayaguez, Puerto Rico, filed a petition for reconsideration [1] of our grant of the special temporary authority (STA) to Telemundo. On November 28, 1972, Video Empresas del Oeste, Inc., permittee of a new UHF television station authorized to operate on channel 44, Aguadilla, Puerto Rico, filed comments in support of Quality's petition for reconsideration. We have these pleadings and associated pleadings [2] before us for consideration.

2. Quality claims standing as a party aggrieved or whose interests are adversely affected by grant of the STA by reason of the fact that it would compete with the translator for viewership in Mayaguez. We find that petitioner has standing. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693, 9 RR 2008.

3. On November 1, 1972, Telemundo requested emergency STA. It stated that, with the exception of a period from February 1971 to December 1971, WKAQ-TV's programs were carried in Mayaguez for a period of 15 years by arrangements with one or another television

[1] The petition is entitled "Petition for Reconsideration and For Immediate Stay of Special Temporary Authorization." On December 6, 1972, the Commission denied Quality's petition for stay of the STA. *Telemundo, Inc.*, FCC 72-1109, released December 14, 1972.

[2] Telemundo filed an opposition to the petition for reconsideration on November 24, 1972, and Quality filed a response thereto on November 28, 1972.

station in Mayaguez, the last such arrangement being with Telesanjuan, Inc., for carriage over the facilities of UHF station WMGZ–TV, channel 16, Mayaguez, Puerto Rico. Such a "network" arrangement is common in Puerto Rico because of the extremely rugged terrain which precludes delivery of television signals over the western portion of the island from stations in the San Juan market.[3] In its request for STA, Telemundo stated that, on October 25, 1972, it learned that the general manager of station WMGZ–TV had informed the Commission, at a hearing being held in San Juan in Docket Nos. 19353–19355 (*Telesanjuan, Inc.*, on applications for renewal of the license of station WTSJ–TV, San Juan, and for licenses to cover the construction permits of station WMGZ–TV and WPSJ–TV, Ponce, Puerto Rico), that, effective the close of the broadcast day on November 30, 1972, Telesanjuan would discontinue its television operations in Puerto Rico. Telemundo stated that, with this development, there would be no way to continue WKAQ–TV's programs in Mayaguez unless emergency authority were granted for a translator operation pending action on the simultaneously-filed application for regular authority to construct and operate a 1,000-watt UHF translator on channel 22, Mayaguez. In order to avert the sudden loss of this existing television service to Mayaguez, the Commission granted emergency STA for 90 days, pursuant to section 309(f) of the Communications Act.

4. Quality asserts, correctly, that no such statement was made by the WMGZ–TV general manager at the hearing—he was, in fact, not present at the hearing—but that counsel for Telesanjuan advised the presiding Administrative Law Judge that Telesanjuan was dismissing its applications and terminating all of its television operations, the latter effective November 30, 1972. The reasons behind the decision were, according to counsel for Telesanjuan, twofold: unacceptable continuing financial losses aggravated by advice from Telemundo that it would not renew its contract to pay $180,000 to Telesanjuan to carry WKAQ–TV's programs in Mayaguez over the facilities of station WMGZ–TV, and the simultaneous resignation of the general manager. The official transcript of the proceeding supports Quality's assertions. From this, however, Quality erroneously concludes that Telemundo misled or deceived the Commission. The Commission, of course, was well aware of the fact that it was counsel for Telesanjuan, not the general manager, who announced the decision to discontinue operations. The identity of the person who made the statement to the presiding officer is, in our view, wholly immaterial and certainly does not constitute a deception practiced on the Commission. Telemundo has, in any event, explained this apparent discrepancy. Quality avers that Telemundo conveyed the impression, in its request for STA, that it was taken by surprise by the announcement, whereas, by advising Telesanjuan that Telemundo would not renew its contract, Telemundo itself was, in large measure, responsible for the decision to discontinue. As set out subsequently herein, there was apparently a misunderstanding between WMGZ–TV's general manager and Telemundo as to

[3] Station WHIK–TV, channel 7, Ponce, is carried in Mayaguez by WORA–TV (petitioner here) and station WAPA–TV, channel 4, San Juan, is carried in Mayaguez by station WOLE–TV.

Telemundo's intentions, but, even were this not so, we do not agree with the inference that, by indicating that it might cancel its contract, Telemundo knew that it would bring about the demise of Telesanjuan. Such an inference does not necessarily follow. The application for a translator and all exhibits were dated subsequent to Telesanjuan's October 25, 1972, announcement at the hearing and, had it been Telemundo's design to effect the collapse of Telesanjuan, it need not have waited so long to prepare an application for a facility to continue its service in Mayaguez. In brief, Quality's conclusion that Telemundo was not surprised because it was itself the instrumentality which caused Telesanjuan's demise, is not necessarily valid and is not supported by any facts to compel such a conclusion.

5. Attached to Telemundo's opposition are affidavits from Mr. K. Dean Stephens, former general manager of WMGZ–TV, and Mr. Rafael Ruiz, officer and general manager of WKAQ–TV. Mr. Stephens' affidavit recites that, on October 24, 1972, he received a telephone call from Mr. Ruiz complaining about the poor quality of the signal of station WMGZ–TV. Mr. Stephens' affidavit continues:

"He [Ruiz] indicated that our rebroadcast relationship could not continue under such poor engineering conditions on our part, and that WKAQ would not renew the rebroadcast agreement with Tele-San Juan *unless substantial improvements were forthcoming* immediately. I told him that I would be in conference with Tele-San Juan ownership that evening and would quite literally place my job in the balance. When I was told that no monetary assistance could come from within our company (Diversified Media, Inc.), I was rather certain that the WKAQ–TV rebroadcast agreement would not continue beyond the November 30, 1972, contract date and told this to Mr. Chalk." (Emphasis added).

Ruiz's affidavit describes the long negotiations with Telesanjuan on the expiring contract and Telemundo's dissatisfaction with the quality of the WMGZ–TV signals. Mr. Ruiz states, with respect to his October 24 telephone call to Mr. Stephens:

"I called Mr. Stephens to complain once again of the continuation of this unsatisfactory condition and emphasized the necessity of a firm commitment by Tele-San Juan to fulfill the prior assurance of WMGZ–TV's facilities improvement. Since this was no more than reaffirmation of an often expressed Telemundo expectation to which Mr. Stephens has informally indicated Tele-San Juan's recognition, there was no thought in my mind at the time that I had demanded anything more than what previously received informal acceptance by Tele-San Juan. I was surprised, therefore, to learn the next day that Tele-San Juan had formally requested dismissal of its application in hearing (including WMGZ–TV) with shut-down effective November 30th."

Mr. Ruiz's affidavit recites that a public announcement by Telesanjuan on October 25, 1972 identified Mr. Stephens as the spokesman for Telesanjuan and, upon seeing this announcement, Mr. Ruiz concluded, erroneously, that it was Stephens who had made the announcement at the hearing. Ruiz further states that it was not his intention or desire to terminate negotiations for renewal of the contract. He states that it was not until October 26th that Telemundo's engineers and legal counsel were directed to prepare the application for a translator and the request for STA.

6. We think that the explanation is logical and we are unwilling to attribute base motives to the applicant in the absence of a far stronger case than Quality's surmise and conjecture permits. More important, however, is the fact that, irrespective of who made the announcement

at the hearing or whether Telemundo was truly surprised, Mayaguez was threatened with the imminent loss of a long-existing television service. In our view, this alone justifies the emergency STA which we granted. Quality, however, insists that ". . . the mere cessation—temporarily or permanently—of such programming does not satisfy the strict statutory standard . . ." imposed by section 309(f) of the Communications Act. To support this proposition, it cites *Folkways Broadcasting Company, Inc.* v. *Federal Communications Commission*, 379 F. 2d 447, 9 RR 2d 2079 (U.S.C.A., D.C. Cir.). Quality's reliance on *Folkways* is misplaced, for that case does not stand for such a proposition. In *Folkways*, the court was considering the action of the Commission allowing an applicant whose basic qualifications were at issue to remain on the air following the court's remand and consequent return of the application to pre-grant status. *Folkways* did not involve section 309(f) of the Communications Act.

7. Finally, petitioner has failed to show any detriment to the public interest and, indeed, we can find none. It has made no effort to show that it will suffer such economic injury as to reflect adversely on the public interest nor that the public interest will be affected either favorably or unfavorably by the continuation of an existing service. Petitioner, furthermore, does not dispute the facts alleged by the applicant that Telemundo provides programming not available from any other source nor that Telemundo's programming is designed for and intended to meet the needs, tastes and interests of all of the island, not just San Juan. Mayaguez is within station WKAQ-TV's predicted Grade B contour and the application is consistent with the Commission's rules.

8. Video Empresas Del Oeste's comments may be considered as informal objections, filed pursuant to section 1.587 of the Commission's rules. They add nothing to the points raised by Quality. We note, however, that there can be no present injury to Video Empresas, for its authorization was granted little more than three months ago and the station has not yet been constructed. Video Empresas seeks to limit our authority to grant emergency STA to situations such as ". . . where a community has no existing service, or stands to lose its only service," citing *Community Broadcasting Co., Inc.* v. *Federal Communications Commission*, 107 U.S. App. D.C. 95, 274 F. 2d 753, 19 RR 2047. In that case, however, the court made it clear that it was concerned only with a situation where one of several competing applicants for regular authority to operate a television station was awarded STA. There, the court pointed out that a comparative hearing was required and that the STA to one of the applicants might seriously prejudice the other applicants. That case bears no similarity to the Mayaguez situation. The Commission's authority to continue an existing service in an area already served by other radio stations was sustained in *Beloit Broadcasters, Inc.* v. *Federal Communications Commission*, 125 U.S. App. D.C. 29, 365 F. 2d 962, 7 RR 2d 2155.

9. For the reasons discussed, we find that petitioner has raised no substantial or material questions of fact which warrant recision of our grant of emergency STA. The STA is valid for 90 days and may be renewed for an additional 90 days upon similar findings by the

Commission. Petitions to deny have been filed against the application for regular authority and we are adjured by the Communications Act to give expeditious consideration to petitions to deny which have been filed in these circumstances. We expect, therefore, to be able to dispose of this matter on its merits prior to the expiration of the STA period.

In view of the foregoing, IT IS ORDERED, That the petition for reconsideration filed herein by Quality Telecasting Corporation and the comments filed herein by Video Empresas del Oeste, Inc., ARE DENIED, and the Commission's action of November 15, 1972, granting emergency special temporary authority, IS REAFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-73

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
VARIOUS METHODS OF TRANSMITTING PROGRAM MATERIAL TO HOTELS AND SIMILAR LOCATIONS	Docket No. 19671
and	
USE OF THE BUSINESS RADIO SERVICE FOR THE TRANSMISSION OF MOTION PICTURES OR OTHER PROGRAM MATERIAL TO HOTELS OR OTHER SIMILAR POINTS	
AMENDMENT OF PART 76, SUBPART G OF THE COMMISSION RULES AND REGULATIONS PERTAINING TO THE CABLECASTING OF PROGRAMS FOR WHICH A PER-PROGRAM OR PER-CHANNEL CHARGE IS MADE	Docket No. 19554
AMENDMENT OF SECTION 73.643(b)(2) AND 74.1121(a)(2) OF THE COMMISSION'S RULES AND REGULATIONS PERTAINING TO THE SHOWING OF SPORTS EVENTS ON OVER-THE-AIR SUBSCRIPTION TELEVISION OR CABLECASTING	Docket No. 18893
AMENDMENT OF PARTS 1, 2, 21 AND 43 OF THE COMMISSION'S RULES AND REGULATIONS TO PROVIDE FOR LICENSING AND REGULATION OF COMMON CARRIER RADIO STATIONS IN THE MULTIPOINT DISTRIBUTION SERVICE	Docket No. 19493
STERLING MANHATTAN CABLE TELEVISION, INC., COMPLAINANT	
v.	
NEW YORK TELEPHONE CO., DEFENDANT	
PETITION FOR CONSOLIDATION FILED BY AMERICAN BROADCASTING COMPANIES, INC.	
PETITION OF NATIONAL ASSOCIATION OF THEATRE OWNER'S, INC., TO IMPOSE A "FREEZE" ON THE FILING AND GRANT OF APPLICATIONS FOR THE USE OF RADIO FREQUENCIES IN CONNECTION WITH THE OPERATION OF CATV PAY-TV SYSTEMS AND/OR CHANNELS AND CLOSED CIRCUIT PAY-TV SYSTEMS	

Notice of Inquiry and Notice of Proposed Rulemaking Memorandum Opinion and Orders

(Adopted January 17, 1973; Released January 24, 1973)

By the Commission: Commissioners Johnson, Reid, and Wiley concurring in the result.

I

1. The Commission has before it for consideration several proceedings which involve the transmission by wire or radio communication of motion pictures to hotel master antenna systems for distribution to hotel rooms. These include the furnishing of closed-circuit video transmission service by the New York Telephone Company to Trans-World Communications (a division of Columbia Pictures Industries, Inc.), which is the subject of a complaint by Sterling Manhattan Cable Television, Inc.; applications of Columbia Pictures Industries, Inc. for microwave facilities in the Business Radio Service in several cities; recent grants to Midwest Corporation and others for construction permits in the Multipoint Distribution Service in three cities; and proposed rule making in Docket No. 19493 concerning use of the Multipoint Distribution Service. Although the distribution systems involved differ in technology and include both private and common carrier systems, they raise common questions of potential competition with commercial television broadcast transmissions and cable television, and potential "siphoning" of program material from free television, in addition to certain issues separately applicable to each method of program distribution. Furthermore, we also have pending other proceedings concerning the "siphoning" issue in the use of subscription television and cablecasting (see Dockets Nos. 18893, 19534).

2. In order to consider these common questions together, the Commission has decided to issue this Notice of Inquiry and Notice of Proposed Rule Making. The basic issue upon which we seek the comment of interested persons is whether, assuming that the various proposed new methods of supplying motion pictures or other mass entertainment to hotels are otherwise in the public interest, they should nevertheless be restricted in order to prevent or limit the competitive effect upon television broadcast service or cable television service. In adopting rules for a subscription television service,[1] we determined that "free" television service to the public should be protected against the siphoning of certain program material for which the public now pays no direct charge. (See Section 73.643 of the Rules and Regulations, 47 CFR 73.643.)[2] For the same reason, we imposed essentially the same restrictions upon programs cablecast for pay upon a per-channel or per-program basis by cable television systems. See Section 74.1121,

[1] *Subscription Television*, 15 F.C.C. 2d 466 (1968), affirmed *National Association of Theatre Owners* v. *F.C.C.*, 420 F. 2d 194 (C.A.D.C. 1969), *cert. den.* 397 U.S. 922.

[2] In Docket No 18893, *Showing of Sports Events*, 34 F.C.C. 2d 271 (1972), we revised those rules as they apply to over-the-air subscription television, with particular regard to sports events. Although we had requested comment on applying the changes to cablecasting, we left that subject for later and separate treatment. Petitions for reconsideration of Docket No. 18893 are pending, but not on this latter question, reconsideration having been denied as to the determination to take up the cablecasting limitations separately. (35 F.C.C. 2d 893 (1972).)

CATV, 23 F.C.C. 2d 825 (1970), now Section 76.225 (37 F.R. 3288). In Docket No. 19554, *Cablecasting Program Charges*, 35 F.C.C. 2d 893 (1972), we requested further comments on the rules governing cablecasting, including the changes with respect to sports programs adopted in Docket No. 18893 for subscription television. The issues now before us are somewhat different, since the presently proposed modes of supplying motion pictures to hotels do not directly convert "free" channels of television broadcasting to pay use, as is the case with subscription television, and do not rely upon television broadcasting to supply basic program material, as is the case with cable television systems. Nevertheless, the questions remain of whether the newer modes will in fact affect the public's receipt of motion pictures or other program material on the other media and, if so, whether it is appropriate for the Commission to adopt similar, or different, restrictions for the new modes, modify the existing restrictions on pay cablecasting and subscription television, or take other remedial action. We are aware that the proposals now before us concern only the supplying of motion pictures to hotels, but the potential for a wider distribution of this and other material would appear to be present, as is the potential for a wider interconnection than now appears to be involved. We stress that this proceeding seeks data as to the trends in these new services and the possible impact of such trends on the public interest. Our action, therefore, may go beyond the hotel/motel aspects and include apartment buildings and similar predominantly non-transient locations.

3. It might have been feasible to consider the competition issue separately with respect to each matter before us involving the transmission of motion pictures to hotels by wire or radio. However, despite the technological differences among them, and the separate questions raised by each mode which apply only to it, we believe it preferable to treat the issue of competitive effect on an overall basis, since this issue is essentially the same with respect to each. Policy in this area should not be made on a piecemeal basis. We therefore request comment, with a view toward the adoption of final rules, on the question of whether we should limit the nature of material transmitted to hotel television receivers (or receivers in other institutions or private homes) by common carrier wire or radio, non-common carrier wire or radio, or laser techniques, in order to prevent the loss of such material by television broadcast stations or cable television systems, or otherwise limit or prevent any such competitive effect upon these services as would be contrary to the public interest. In this regard, we seek information and views on the nature of existing and potential transmission methods, their impact on other services and the policy appropriate to their regulation. Is free competition or limited competition more in the public interest, taking due account of the nature of the respective services? If restrictions on free competition are desirable, what should they be—should they be similar to those now in effect for subscription television and pay cablecasting, or should they include more less program material? Should they apply to transmissions to any television receivers, even if such transmissions are limited to hotels serving primarily transients, or should they take effect only where a larger or non-transient audience is involved? If the latter, at what point should they come into play? Should we consider relaxing the existing

restrictions on pay cablecasting and subscription television rather than impose conditions upon the new services? Finally, should these forms of transmission be required to provide other services required of cable television systems? If so, what should be the form of the rule change (e.g. expanding the definition of a cable system to include hotel or apartment building systems)?

4. During the period we are considering the questions raised in this proceeding, we believe cable systems should be able to compete on an equal footing for the hotel/motel motion picture distribution business. By this we mean in competitive situations those cable systems desiring to transmit motion pictures to hotels or motels (i.e., accommodations used predominantly for transient occupancy) should not be required to adhere to our 2–10 year film restriction (i.e., Section 76.225(a)(1) of our rules). Therefore in the aforementioned situation where a cable system is in competition with a non-cable television program distribution system within the cable system's franchise area, we will waive upon appropriate request Section 76.225(a)(1) of our rules with respect only to cable transmission to hotels/motels. A cable system may file for a waiver in the very early stages of a competitive situation, and in any event it and the hotel/motel entrepreneur may proceed with negotiations in such competitive situations with the assurance that a waiver will be forthcoming.[3]

5. Authority for the proposed rule making and inquiry instituted herein is contained in Sections 2, 3, 4 (i) and (j), 201, 214, 301, 303, 307, 308, 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 152, 153, 154 (i) and (j), 201, 214, 301, 303, 307, 308, 309, and 403.

In accordance with the provisions of Section 1.419 of the Commission's rules and regulations, an original and 14 copies of all comments, replies and other pleadings shall be filed. Written comments should be filed on or before May 21, 1973, and reply comments on or before July 23, 1973.

II

6. We also have before us the petition of American Broadcasting Companies, Inc. (ABC) for consolidation of the rule making proceedings in Docket Nos. 19554, 18893 and 19493, the Sterling Manhattan Cable Television complaint and the applications of Columbia Pictures for microwave licenses, insofar as these matters relate to the "siphoning" of program material from free television.[4] Several parties have opposed this request. We agree with ABC, as indicated above, that there is a competitive impact issue common to the transmission methods other than subscription television and cablecasting which should be treated in one proceeding. However, we do not agree that all of the pending matters should be consolidated. We will proceed with them, and dispose of the ABC petition, in the manner set forth below.

7. Docket No. 19554, concerning the cablecasting of programs for which a per-channel or per-program charge is made, has been before

[3] We stress that our willingness to entertain the above waivers of the 2–10 year film restriction is a temporary measure designed to apply until the proceeding we are instituting today is finally resolved. This action is in no way indicative of any decision we might reach in Docket 19554.

[4] The Illinois Commerce Commission has also sought consolidation.

us since June 1970. Throughout this proceeding we have indicated our desire to expedite its resolution. When we adopted our July 19, 1972 *Notice of Proposed Rule Making and Memorandum Opinion and Order*, we said at page 8,

"We will make every effort to expedite resolution of this proceeding and expect to adhere to this proposed time table."

Later, on September 27, 1972 when we extended the time for filing comments and reply comments for a period less than that requested, we said:

"In issuing the *Notice* in this proceeding we indicated our intention to complete it expeditiously. Expedition was felt to be especially desirable because the existing rules were to be retained during the course of the proceeding although they had been subject to serious criticism on both procedural and other grounds."

We reiterate this view and believe that a consolidation of this proceeding with the other captioned matters would cause an unnecessary delay. The issues surrounding pay cablecasting are sufficiently distinct to be handled separately, and we see no need to delay their resolution while we investigate the potential effect of the other methods of program transmission which are the subject of our inquiry. In our July 19, 1972 *Notice* we restated the relevant questions and said we would take into consideration prior comments on these questions and any new comments relating to them. We also proposed to receive comments on four questions listed by ABC.[5] Since the particular questions relate to our pay cable policy, we feel it appropriate to decide them in Docket 19554. This will not deprive us of the flexibility to change these rules if necessary or to take notice of comments received on these questions and the effect of any decision made by us in this Docket upon the proceedings begun today.

8. Docket No. 18893 is virtually completed. The only matters left for decision are questions concerning clarification of amended Section 73.643(b) (2) adopted in our Report and Order of March 23, 1972 (34 F.C.C. 2d 271). This being so, and because of the separate policy questions relevant to subscription television which, as we noted above, directly displaces traditional television broadcasting, we see no reason to order a consolidation of this docket with all the other captioned matters which would substantially delay a decision we can make very soon.

9. Docket No. 19493 involves a number of issues beyond those which are the subject of our notice and inquiry herein. However, it also involves basically similar competitive questions. Thus, in the *Notice of Proposed Rule Making* released on April 26, 1972, 34 F.C.C. 2d 719, at 722, we stated:

"The future development of this service is not entirely clear at this time. The various uses as projected by the applicants appear to be limited to instructional and business closed circuit television. While we do not anticipate that these facili-

[5] 1. What are the legal, technical, and economic differences between over-the-air subscription television and pay cablecasting?
2. Are there, as the Department of Justice suggests, means of protecting the viewing public by less restrictive means than the existing rules?
3. Are the rules appropriate for and how should they be administered with respect to access and leased channel cablecasting for which there is a per-program or per-channel charge and not subject to the control of a cable television operator?
4. Have there been significant and relevant changes in the motion picture industry that should be reflected in the rules?

ties would be used to reach a mass market for closed circuit entertainment programming, a substantial entertainment market would appear to be possible. For example, an entrepreneur could arrange through the carrier to have programming (e.g., sports of movies) distributed for several hours a day or week to a number of hotels in a city, or in several cities if intercity connections were provided. While such arrangements would not be likely to reach the mass audiences anticipated in connection with subscription television or cablecasting, the audience could be substantial nonetheless. Therefore, we raise the question whether some anti-siphoning rules similar to those adopted in our Report and Order in Docket No. 18893, released March 29, 1972 (FCC 72-263), would be appropriate. We solicit comments on this question, including whether and to what degree this service is likely to develop into a device for serving substantial entertainment audiences. It is appropriate to note that other types of common carrier facilities, e.g., point-to-point microwave and cable, are also used for closed circuit television distribution. Therefore, it is possible that the Commission may want to consider the matter in a broader context than this proceeding."

Because we have already asked for comments on this subject, we will extract from Docket No. 19493 those comments which deal with it, and include them in the proceeding we are instituting today.

10. We are also today ruling upon the Sterling Manhattan Cable Television complaint against New York Telephone Company in a separate document. The issues raised there are consolidated herein to the extent already indicated.

III

11. In another action today, we have made a partial grant of applications filed by Columbia Pictures for microwave facilities in the Business Radio Service in the 12200–12700 MHz band. Our grants authorize Columbia Pictures to use private microwave to distribute motion pictures to hotels for viewing by the hotel guests and for distributing information about the movies available and the starting time of each feature. We have not granted Columbia Pictures proposals to use microwave radio channels for convention coverage and for transmission of paid advertisements associated with information about services, facilities and attractions in the city. Further, we have conditioned our grants on the outcome of this proceeding because, although we concluded that the partial grants are consistent with existing rules, we believe a broad review of this type of use of Business microwave facilities is desirable.

12. Accordingly, we request comments on the following questions: (a) whether the microwave frequencies available in the Business Radio Service should be used for the transmission of motion pictures or other program material to hotels or to other reception points on a subscription basis; (b) if this service is to be authorized, what, if any, program transmission restrictions should be imposed, and what should be its relationship to cable television services; (c) more generally, comments are requested on whether Business microwave frequencies should be used for distribution by the licensee of his product for which a charge is made (such as motion pictures, music, etc.), or his services (such as computer service) to his customers; (d) whether private systems for convention coverage and transmission of information supported by advertising should be authorized; (e) assuming the services described in (a), (c) and (d) above are to be permitted, comments are requested on the impact of each on the spectrum space available in the Business

Radio Service and on whether a new radio service, perhaps on frequencies above 12700 MHz, should be established.

13. Resolution of these issues may result in amendment of the rules governing the use of the Business Radio Service or new proposals for the creation of a new service. Authority for the proposed amendments is in Sections 301, 303, 307, 308, 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 301, 303, 307, 308, 309, and 316. The time for filing comments on these issues is the same as that set forth above with respect to the general competitive impact issues.

IV

14. In reaching its decisions in these matters, the Commission may take into account any relevant information before it in addition to the specific comments received. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

15. In view of what has been set forth above, the petition of American Broadcasting Companies, Inc., and that of the Illinois Commerce Commission ARE GRANTED to the extent indicated and otherwise ARE DENIED.

16. The petition of the Theatre Owners of America is also DENIED. Their request for a stay across-the-board of all grants of applications for the use of the spectrum in connection with pay cable or the provision of program material to hotels is unsupported by any showing warranting the grant of this drastic relief, either in terms of private or public injury or problems of spectrum scarcity.

FEDERAL COMMUNICATIONS COMMISSION.
BEN F. WAPLE, *Secretary.*

39 F.C.C. 2d

109-027—73——11

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
WDSU-TV, INC., ASSIGNOR
and
COSMOS BROADCASTING OF LOUISIANA, INC.,
ASSIGNEE
For Assignment of License of Station
WDSU-TV, New Orleans, La.

NOVEMBER 29, 1972.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), ROBERT E. LEE, REID, WILEY AND HOOKS, WITH COMMISSIONER H. REX LEE CONCURRING AND COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT, APPROVED THE ABOVE ASSIGNMENT OF LICENSE.

WDSU-TV, NEW ORLEANS, LA., LICENSE ASSIGNED TO COSMOS BROADCASTING OF LOUISIANA, CONSIDERATION $16,000,000

Application for assignment of license of station WDSU-TV, New Orleans, La., from WDSU-TV, Inc. to Cosmos Broadcasting of Louisiana, Inc., has been granted by the Commission. Total consideration for the assignment is $16,000,000.

Cosmos Broadcasting of Louisiana, Inc., is 100 percent owned by Cosmos Broadcasting Corp., licensee of WIS-AM-TV, Columbia, S.C., WSFA-TV, Montgomery, Ala., and WTOL-TV, Toledo, Ohio.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

In an effort to ward off the rise of monolithic control over the nation's broadcast stations, the Federal Communication Commission promulgated rules against multiple ownership of television stations. Those rules—which limit the maximum number of VHF stations which may be controlled by a single institution or individual—sought to ensure that the benefits of diversity of ownership would not be curtailed.

Today the majority—with a logic conspicuous by its absence—makes a mockery of its own rules and the public interest.

At issue is the question whether Cosmos Broadcasting of Louisiana should be allowed to purchase, for a whopping $16 million, television station WDSU-TV in New Orleans.

Cosmos is the wholly owned subsidiary of Cosmos Broadcasting Corporation which, in turn, is owned by the Liberty Corporation. Fourteen per cent of Liberty is held in trust by the South Carolina National Bank of Charleston (SCN). Through its subsidiary—Cosmos

Broadcasting Corp.—Liberty already owns three VHF stations, one in Columbia, South Carolina, one in Montgomery, Alabama, and one in Toledo, Ohio. SCN, along with its 14% share of Liberty, also holds, in trust, 3.2% of Multimedia, Inc., which is the licensee of three VHF stations, one in Greenville, South Carolina, one in Knoxville, Tennessee, and one in Macon, Georgia. SCN also holds, in trust, 4% of Sparten Radio Casting Co., licensee of a VHF station in Spartanburg, South Carolina.

In other words, the South Carolina National Bank of Charleston has substantial financial interests in seven VHF broadcast stations. With today's transfer, it will acquire an interest in an eighth VHF station.

The Citizens and Southern National Bank of Charleston also owns a piece of Liberty, holding in trust a 1.3% voting interest. Citizens also owns 2.2% of the State Record Co., which controls two VHF stations—one in Charleston and the other in Lubbock, Texas. With today's transfer, the Citizens Bank will win a substantial financial interest in a sixth VHF station.

Today's assignment does not merely reward these two banks with another in their expanding line of VHF interests. It also rewards Mr. John I. Smith with an interest in a seventh such station. Mr. Smith is a director and 1.319% owner of Liberty. He is also a director of the People's National Bank of Greenville, South Carolina which holds a 6.4% voting interest in Multimedia, Inc.

Given the majority's blithe approval of today's transfer, one would never suspect that the FCC has actually promulgated rules (45 CFR § 72.636(a)(2)) which preclude one institution or individual from owning interests in more than one VHF station if the resulting concentration of media control violates the public's interest in a diversity of broadcast views. Nor could one imagine that those same rules define ownership of more than five VHF stations as a *per se* violation of the public interest.

And the reason a casual observer of the FCC would never be aware of these rules is that the FCC has, through this and other decisions, robbed those rules of their vitality, ignored their commands, pretended that both the rules and their underlying justifications do not exist.

Today's acquisition will give the assignee's parent, Cosmos Broadcasting Corporation, the license to its fourth VHF station. Yet, the majority does not even bother to ask whether such multiple ownership of four VHF stations—three of which are in the same geographic region of the country—poses public interest problems. Instead, the majority has apparently decided that, absent ownership of more than five VHF stations, there is no need to inquire into whether an acquisition could violate our policy favoring a multiplicity of broadcast views. This holding has the obvious effect of converting our definition of what constitutes a *per se* violation of the public interest into *the only possible* violation.

Such an amendment to our multiple ownership rules in the absence of a formal rulemaking proceeding is, of course, lawless. It is also blatantly contrary to the public interest. Our rules demand that, in cases such as this, we examine the extent of the assignee's concentration

of media control, and that we do so through a hearing wherein the facts might be forthcoming.

Nor does the majority stop there in its attempts to emasculate our multiple ownership rules. Aware of the fact that, as the result of this acquisition, two banks will win substantial interests in more than five VHF stations, the majority must find some way to ignore its own definition of what sort of ownership constitutes a *per se* violation of the public interest. This it does through reference to a prior—and equally horrendous—ruling.

In May of this year, the majority raised from 1% to 5% the amount of stock in diverse broadcast stations which banks may hold in trust without being attributed with "ownership" of those stations. Multiple Ownership Rules, 34 F.C.C. 2d 889 (1972). While individuals are attributed with ownership if they own more than 1% of such stations, mutual funds may, oddly enough, escape scrutiny and still own up to 3%.

And, inexplicably, America's most powerful financial institutions—the bankers—are now permitted to own up to 5% of an ever-increasing number of broadcast interests, so long as they assure the Commission that they will not exercise control over those interests. In reaching this peculiar result, the majority solicited neither the views of the Justice Department's antitrust division, nor the views of the House Banking Committee. It chose instead to operate in the intellectual vacuum of political expediency. As I suggested in my dissenting statement, the single unifying thread of the majority's opinion appeared to be a search for the most efficient means of avoiding substantial divestiture.

By today's action, the majority has enlarged upon its favored treatment afforded to banks. So subtle is the enlargement, in fact, that the majority does not even bother to allude to it. In its May rulemaking the majority obviously was concerned about the economic effects of divestiture. Today's action not merely insulates the two banks from this remedy, but permits them to *expand* upon their acquisitions! And this in spite of the fact that the transfer of WDSU-TV will enable these banks to increase their domination over the airwaves in one region of the country—the South. As I noted in my prior dissent:

> Surely substantial bank ownership, even of less than five per cent, of several close competitors, in [one] . . . region should be viewed differently from bank holdings of five per cent in widely-scattered licensees.

But the majority did not agree then, and it clearly does not agree now.

The South Carolina National Bank, in fact, already has sizable interests in three VHF stations in the same state—South Carolina. Through its 14% share of Liberty, SNC has an interest in WIS-AM-TV in Columbia. Through its 3.2% share of Multimedia, Inc., SNC owns an interest in WFBC-AM-FM-TV in Greenville. And through its 4% share of Sparten Radio Casting, SNC controls an interest in WSPA-AM-FM-TV in Spartenburg. A casual glance at *Television Factbook* reveals that both the grade A and grade B contours of all of three stations overlap substantially, thus giving SNC considerable

control over three VHF stations in the same market—something which our rules are supposed to prohibit, 47 CFR § 73.636(a)(1).

Today's assignment may not enlarge SNC's control of broadcasting in South Carolina, but it certainly enlarges SNC's control over the airwaves throughout the southern part of America. The majority—which often appears oblivious to the problems inherent in massive cross and multiple ownership of broadcast interests—is not impressed. The banks own less than 5% of these VHF stations, so that's the end of the inquiry.

Perhaps realizing the dangers in affording such favored treatment only to banks, the majority also decides—in the total absence of a formal rulemaking—to extend such protection to individuals. Though this may solve the problem of inequitable treatment inherent in the majority's May *Report and Order*, it completely vitiates our cross and multiple ownership rules.

By today's acquisition, Mr. John I. Smith will possess a greater than 1% interest in seven VHF stations. Because Mr. Smith has promised that he will not participate in any activities of the Peoples National Bank of Greenville with respect to that bank's broadcast interests, Mr. Smith's additional broadcast acquisition does not offend the majority. Yet, Mr. Smith cannot be serious when he vows to exclude himself from the People's Bank's actions with respect to its interests in Multimedia, Inc. For, Mr. Smith is a director of that bank, and to exclude himself from the bank's investment policies would almost certainly expose this director to serious legal actions for breach of his fiduciary duty to the bank's investors.

It is noteworthy—but not surprising—that the majority does not even mention the concept of "fiduciary duty."

I dissent.*

*Subsequent to the Broadcast Bureau's preparation of the majority's opinion, the Bureau advised the Commission that Multimedia, Inc. currently owns not three VHF stations, but four—the fourth being WSTS in Winston-Salem, North Carolina. Thus, through today's transfer, the South Carolina National Bank of Charleston will acquire a sizable interest in its ninth VHF station, and Mr. Smith will receive an interest in his eighth such station. By now, of course, it is obvious that the majority is not troubled by mere numbers. And so, aside from a few typographical corrections, its opinion and result remain unchanged. Our multiple ownership rules, however, do not.

F.C.C. 73–98

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WALTER E. WEBSTER, JR., RECEIVER, ASSIGNOR and STERLING THEATRES CO., ASSIGNEE For Assignment of Licenses of Stations KTW–AM and FM, Seattle, Wash.	BAL–7494 and BALH–1618

JANUARY 23, 1973.

WALTER E. WEBSTER, Jr.,
Receiver, 1505 Northern Life Tower, Seattle, Wash.

Mr. FREDERIC A. DANZ,
Sterling Theatres Co., 1975 John Street, Seattle, Wash.

Mr. and Mrs. NORWOOD J. PATTERSON,
Suite 3005, 666 East Ocean Boulevard, Long Beach, Calif.

Mr. S. H. PATTERSON,
c/o Norwood J. Patterson, Suite 3005, 666 East Ocean Boulevard, Long Beach, Calif.

GENTLEMEN AND MRS. PATTERSON: This refers to the applications for assignment of the licenses of Stations KTW AM & FM, Seattle, Washington from Walter E. Webster, Jr. (Receiver) to Sterling Theatres Company (BAL–7494 and BALH–1618).

As you are aware, when the applications were before the Commission on November 22, 1972, the Commission concluded the overall public interest would best be served by deferring action on the applications until the U.S. Circuit Court of Appeals for the Ninth Circuit had rendered a decision in the proceeding styled *In the Matter of Nordawn, Inc.*, Case No. 71–2990. The Commission's letter of November 22, 1972 further indicated that in any event, before the applications could be granted, a hearing on three proposed issues would be required. Those issues involved (a) the *bona fides* of Sterling's ascertainment survey, (b) compliance with the Primer requirements respecting linkage of ascertained community problems to proposed programming, and (c) compliance with Section 73.242 of the Rules.

On January 11, 1973, Sterling Theatres filed a "Request for Immediate Grant" and certain amendments to the applications which are said to obviate the need for a hearing. Our concern here is with the "Request for Immediate Grant". The principal argument advanced in support of that Request is that our earlier deferral of action pending a decision on Nordawn's appeal is inconsistent with a long line of precedents in renewal and assignment proceedings (including several recent proceedings) wherein applications have been granted, sub-

ject to the outcome of the pending litigation. Assignee requests that a grant similarly conditioned be made here. In making this Request, Sterling further contends that in view of the affidavits submitted by lawyers familiar with the pending bankruptcy appeal, ". . . there is very little likelihood of the Court taking any action which would invalidate the purchase agreement." The Receiver fully supports the Request in a letter dated January 17, 1973. By their letter dated January 22, 1973, Norwood and Gloria Patterson, S. H. Patterson, and Nordawn, Inc., oppose the Request.

We have carefully considered the Request, but we are not persuaded the merits of the applications should be reached until the Ninth Circuit Court of Appeals has rendered its decision. The proceedings relied on in the Request are clearly distinguishable from the present proceeding in one vital respect: none of them involves pending litigation which challenges the *assignor's* (here the Receiver's) authority to enter a contract assigning a license. In this respect, the present proceeding is more closely allied to a renewal proceeding which looks to denial of a renewal and consequent termination of operating authority. In that situation, since there may be no license to assign, the Commission has deferred action on any attempted assignment until the threshold renewal matters are resolved.

It may well be that the prospect of any action by the Appeals Court which would invalidate the purchase contract is remote. But the opinions of counsel submitted earlier to us (and referred to in the Request) on the question of whether a reversal of the U.S. District Court would require removal of the Receiver, and if so, what effect such a removal would have on the status of the licenses in the event Sterling had already consummated the assignments, were conflicting. For these reasons, a conditional grant would not adequately safeguard the public interest because, in the event consummation occurs before a decision, it might give rise to intervening equities (here, the use of Sterling Theatres' purchase money to pay off Nordawn's creditors) or future litigation which would unnecessarily cloud the status of the licenses. Accordingly, we remain of the view that the overall public interest would best be served by deferring action until the Court of Appeals has rendered its decision. Hopefully, in view of the "Motion for Early Hearing" filed by the Receiver in the appeal, that decision will not be long delayed.

Commissioner Reid concurring in the result; Commissioner Wiley not participating.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73–162

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF WEST JERSEY BROADCASTING CO., LICENSEE OF RADIO STATION WJJZ, MT. HOLLY, N.J.
For Foreiture

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 9, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. The Commission has under consideration (1) its Notice of Apparent Liability dated February 9, 1972 addressed to West Jersey Broadcasting Company, licensee of Radio Station WJJZ, Mt. Holly, New Jersey, and (2) licensee's response to the Notice of Apparent Liability dated March 10, 1972.

2. The Notice of Apparent Liability in this proceeding was issued because of licensee's apparent willful or repeated violation of:

(1) Terms of the station authorization and Section 73.67(a)(6) of the Commission's Rules: Failure to read and enter in the operating log the indications at the transmitter of the common point current, base currents, phase monitor sample loop currents, and phase indications, within two hours of commencement of operation on March 16, 1971, and April 8, 1971.

(2) Section 73.111(a) of the Commission's Rules: The entries of operating parameters, as required by Sections 73.67(a)(6) and 73.113, in the operating logs of March 16, 1971, between the hours of 6:00 a.m. and 7:30 a.m. EST and on April 8, 1971, between the hours of 7:30 a.m. and 8:00 a.m. EST, by Bruce M. Schiller, operator license number P1–3–8889, were made without actual knowledge of the facts required, in that Mr. Schiller was not on duty either at the transmitter location or remote control point.

(3) Section 73.111(a) of the Commission's Rules: The entries of operating parameters as required by Section 73.113, made in the operating log of March 16, 1971, at 8:00 a.m. EST by Ronald J. Aicher, license number P1–3–8909, were made without actual knowledge of the facts required in that Mr. Aicher did not arrive at the remote control point at the Washington Hotel until 8:05 a.m. EST.

(4) Section 73.93(e) of the Commission's Rules: Failure to make a complete inspection by an operator holding a valid radiotelephone first class license of all transmitting equipment in use 5 days each week, as evidenced by the maintenance logs for the weeks ending December 20, 1970, March 14, 1971, April 4, 1971, and April 11, 1971.

(5) Section 301 of the Communications Act of 1934, as amended, by using a Gates Type Vanguard II auxiliary transmitter regularly for presunrise broadcasting from a date prior to January 1, 1971 through April 8, 1971; a license for this transmitter has not been issued by the Commission.

3. The Notice of Apparent Liability indicated that the licensee was subject to apparent liability for forfeiture in the amount of Two Thousand Dollars ($2,000) pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended. The proceeding was con-

fined to violations occurring within one year prior to the issuance of the Notice of Apparent Liability.

4. In response to the Notice of Apparent Liability the licensee does not dispute the existence of the violations but requests a reduction in the amount of forfeiture. As grounds for this request the licensee urges consideration of certain factors, which may be summarized as follows: (a) WJJZ is the only local radio facility in the area; (b) the station is owned by local residents and is locally oriented to serve the Mt. Holly-Burlington area; (c) the owners are local businessmen without radio experience (except for one stockholder) who have been required to depend upon the station's professional staff who were responsible for virtually all of the violations; (d) the station has an operating deficit of a considerable amount which required additional capital contributions by the stockholders; (e) the study of the violations, the preparation of replies to the citations for violations, and the corrective actions taken have already cost the station more than $2,000; and (f) the legislative history of the forfeiture provisions of the Act makes clear that those provisions were not viewed essentially as punitive devices but rather as educational in nature, which should be especially the case regarding small stations with limited resources or those in loss positions.

5. In the licensee's reply to the original Notice of Violation issued by the Field Engineering Bureau, the licensee stated that the station was operated by local businessmen and civic leaders who had no previous experience in operating a broadcast facility and who therefore were required to rely heavily upon its professional staff. The reply further stated that the station had suffered losses and a substantial deficit. Thus, the Commission fully considered these matters before adopting the Notice of Apparent Liability for forfeiture in this proceeding. Licensee urges as new matter that a substantial sum ($2,000) has been expended in preparing replies to the citations and for corrective actions and argues that the forfeiture provisions of the Communications Act should be used for educational purposes rather than as punitive devices. However, in the early case of *Crowell-Collier Broadcasting Corp.*, 21 RR 2d 921, 927 (1961) we stated:

> We intend to use the forfeiture proceeding, as we believe it was intended to be used, to impel broadcast licensees to become familiar with the terms of their licenses and the applicable Rules, and to adopt procedures, including periodic review of operations, which will insure that stations will be operated in substantial compliance with their licenses and the Commission's Rules.

We have also held that licensee's are responsible for the acts or omissions of their employees. *International Broadcasting Corp.*, 19 FCC 2d 793 (1969), and that a licensee will not be excused for past violations because of subsequent corrective action, *Executive Broadcasting Corporation*, 3 FCC 2d 699 (1966). The licensee's financial reports were considered by the Commission before issuance of the Notice of Apparent Liability.

6. In view of the foregoing, IT IS ORDERED, That West Jersey Broadcasting Company, licensee of Radio Station WJJZ, Mt. Holly, New Jersey FORFEIT to the United States the sum of Two Thousand Dollars ($2,000) for repeated failure to abide by the provisions of the station authorization, Sections 73.67(a)(6), 73.93(e), and

73.111(a) of the Commission's rules, and Section 301 of the Communications Act of 1934, as amended. Since we have found these violations to have been repeated, we find it unnecessary under the Communications Act of 1934, as amended, to make any additional determination as to whether the violations were willful. *Paul A. Stewart*, FCC 63–410, 25 RR 375. Payment of this forfeiture may be made by mailing a check or similar instrument to the Commission drawn to the order of the Treasurer of the United States. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules an application for mitigation or remission of forfeiture may be filed within thirty (30) days of the date of receipt of this Memorandum Opinion and Order.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail—Return Receipt requested to West Jersey Broadcasting Company, licensee of Radio Station WJJZ, Mt. Holly, New Jersey.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-69

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
WIOO, INC., CARLISLE, PA.	Docket No. 19468
HOWARD J. HILTON, JOHN E. MCGOWAN, AND JOHN E. HILTON, DOING BUSINESS AS HILTON, MCGOWAN & HILTON, CARLISLE, PA.	File No. BPH-6572 Docket No. 19469 File No. BPH-6631
ALEXANDER CONTRACT AND SYLVIA CONTRACT, DOING BUSINESS AS CUMBERLAND BROADCASTING CO., CARLISLE, PA.	Docket No. 19471 File No. BPH-7404
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 9, 1973)

BY THE REVIEW BOARD.

1. In a petition to enlarge issues, WIOO, Inc., argues for the addition of an issue questioning whether Cumberland Broadcasting Company, in its original application, incorrectly represented the terms and conditions of a loan commitment from Mr. James Line.[1] The petition is supported by an affidavit from Mr. Line stating that he agreed to make the loan because he was promised an ownership interest in the station after it was granted. The application made no reference to an ownership interest. Mr. Contract, the principal of Cumberland who made the agreement with Mr. Line, denies that any ownership interest was promised. While good cause for the late filing of this petition has not been established, a serious public interest question bearing on the qualifications of Cumberland Broadcasting to be a licensee of the Commission has been raised which cannot be resolved except through a hearing in view of the conflicting statements revealed in the affidavits. Therefore, an appropriate issue will be added.

2. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed by WIOO, Inc., on November 7, 1972, IS GRANTED and the issues ARE ENLARGED as follows:

To determine whether in filing its original application, Cumberland Broadcasting Company misrepresented the terms and conditions of the loan commitment from Mr. James Line and to determine the effect thereof on Cumberland Broadcasting Company's basic and/or comparative qualifications to be a licensee of the Commission.

[1] The petition was filed on November 7, 1972; Cumberland filed an opposition on November 22, 1972; on November 22, 1972, the Broadcast Bureau filed comments supporting the petition; and a reply was filed by WIOO on December 11, 1972.

3. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence on this issue SHALL BE upon WIOO, Inc., and that the burden of proof SHALL BE upon Cumberland Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-133

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMERICAN TELEVISION RELAY, INC. (ATR)
Revised Rates for Microwave Service;
Tariff F.C.C. No. 8, Transmittal No. 50

Docket No. 19609

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 15, 1973)

BY THE COMMISSION:

1. On October 18, 1972, we suspended for three months and designated for hearing herein certain tariff rates filed by American Television Relay, Inc. (ATR), for television program transmission services to CATV customers in Arizona, California, New Mexico and Texas. 37 FCC 2d 751.

2. We framed the issues to govern the proceeding as follows:

(1) Whether the charges, classifications, practices, and regulations published in the aforesaid tariffs are or will be unjust and unreasonable within the meaning of Section 201(b) of the act;

(2) Whether such charges, classifications, practices, and regulations will, or could be applied to, subject any person or class of persons to unjust or unreasonable discrimination or give any undue or unreasonable preference or prejudice to any person, class of persons, or locality, within the meaning of Section 202(a) of the act;

(3) If any of such charges, classifications, practices, and regulations are found to be unlawful, whether the Commission should prescribe charges, classifications, practices, and regulations for the service governed by the tariffs, and if so, what should be prescribed.

3. We now have before us a "Joint Motion For Enlargement of Issues" filed on or about November 9, 1972 by three of the CATV customers of ATR who would be affected by the increases, namely, Columbia Cable Systems, Inc., Cruces Cable Company, Inc. and Teleprompter Corporation (hereinafter "Petitioners"). Petitioners ask us to add the following "new" issues:

(1) Whether the charges, classifications, practices and regulations published in the aforesaid tariffs are consistent with Price Commission guidelines as expressed in the Commission's proposed Section 61.39.[1]

[1] An Executive Order, issued January 11, 1973, abolished the Price Commission and its regulations transferring, regulatory authority over rate increases by public utilities, effective January 10, 1973, to the Cost of Living Council. The criteria applicable to such rate increases are found at 38 FR 130.81 and are as follows:
(a) The increase is cost-justified and does not reflect future inflationary expectations;
(b) The increase is the minimum required to assure continued adequate and safe service or to provide for necessary expansion to meet future requirements;
(c) The increase will achieve the minimum rate of return needed to attract capital at reasonable costs and will not impair the credit of the public utility; and
(d) The increase takes into account expected and obtainable productivity gains.

109-028—73——1

(2) Whether the carrier's increased rates should be contingent on a commitment to an improvement in service.

4. We shall deny this motion for the reasons that (1) no showing has been made by Petitioners that the issues as originally stated do not cover the substantive matters contemplated by the requested issues and (2) the motion was not accompanied by an affidavit as required by Section 1.229(c) of our Rules.

5. With respect to the first requested issue, we framed the original issues in the broad statutory terms used in Sections 201(b) and 202(a) of the Act. Consequently, the parties may adduce on the record competent and material evidence that is relevant to such broadly stated issues. To the extent, therefore, that there are in effect at the time of the hearing or decision herein, any guidelines of the Cost of Living Council that are relevant to the statutory requirements of Section 201(b) or 202(a) such guidelines will be considered by the Commission in determining the lawfulness of the increased rates involved in this case. There is therefore no need to add this issue.

6. With regard to the second requested issue, we have already specified an issue (No. 3) under Section 205 of the Act by which we can make such prescriptive orders as may be warranted by the evidence of record. Thus, if the evidence of record adduced by the parties relating to the quality of service rendered by ATR warrants the imposition of service conditions on any rate increase by the Commission the issues as originally stated are broad enough to permit such action. No need has been shown for the requested issue.

7. Petitioners have not only failed to give appropriate attention to the language of our original issues in submitting this unnecessary motion, but they have failed to comply with Section 1.229(c) of our Rules which requires that an affidavit accompany their motion.[2] We shall therefore deny the motion on its merits and for failure to comply with our rules.

8. Accordingly, Petitioner's "Joint Motion For Enlargement of Issues" IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[2] On or about December 13, 1972 (more than a month after the Motion was filed) Teleprompter filed an affidavit to be associated with a "reply" to ATR's Opposition. Obviously this does not comply with Section 1.229(c).

F.C.C. 73-147

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re CABLE TELESYSTEMS OF NEW JERSEY, CHERRY HILL TOWNSHIP, N.J. For Certificate of Compliance	CAC-985, CSR-205 NJ118

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONER H. REX LEE ABSENT.

1. On August 8, 1972, Cable Telesystems of New Jersey filed an "Application for Certification" (CAC-985) in which it proposes to operate a new cable television system at Cherry Hill Township, New Jersey. Cherry Hill Township is located within the Philadelphia market (#4), and Cable proposed to carry the following television broadcast signals: KYW-TV (NBC), WPVI-TV (ABC), WCAU-TV (CBS), WPHL-TV (Ind.), WTAF-TV (Ind.) WUHY-TV (Educ.), WKBS-TV (Ind.), all Philadelphia, Pennsylvania; WHYY-TV (Educ.), Wilmington, Delaware; WNJT (Educ.), Trenton, New Jersey; and WOR-TV (Ind.), WPIX (Ind.), both New York, New York. On October 2, 1972, Taft Broadcasting Company, licensee of Station WTAF-TV, Philadelphia, Pennsylvania, filed a letter opposing the application. On October 13, 1972, Cable amended its application to respond to Taft's objections, and on November 20, 1972, it amended its application to propose carriage of WXTV (Ind., Spanish lang.), New York, New York.

2. Taft argues that Cable's franchise does not comply with the requirements of Section 76.31 of the Commission's Rules because it does not require the franchisee to investigate and resolve complaints or to maintain a local business office as required by Section 76.31(a)(5) of the Rules. In response to Taft's objection, Cable amended its application to state that it will maintain a log of all complaints received and attempt to handle them on a same-day basis, and it will maintain a local business office. In addition, we note that Cable's franchise is also inconsistent in the following respects: the duration of the franchise is 20 years; local authorities do not have power to approve subscriber rates; the franchise fee is inconsistent (the franchise calls for 5% of gross receipts or $3,000, whichever is higher); there is no provision to incorporate this Commission's regulations within one year; and there is no construction schedule. We accept Cable's statement that it

will submit a renegotiated franchise consistent with the rules by March 31, 1977. We note that the franchise was granted on December 13, 1965, and that there is substantial compliance sufficient to permit grant of the application until March 31, 1977, *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10; *LVO Cable of Shreveport-Bossier City*, FCC 72–954, 37 FCC 2d 1037.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the letter objection filed October 2, 1972, by Taft Broadcasting Company IS DENIED.

IT IS FURTHER ORDERED, That the "Application For Certification" (CAC–985) filed August 8, 1972, by Cable Telesystems of New Jersey IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-115

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of the Application of
COMMUNICATIONS SATELLITE CORP.
For Such Authority as May Be Necessary in Order To Participate in a Program for the Construction of Four High-Capacity Communications Satellites and for Approval of the Technical Characteristics Thereof

File No. 7-CSS-P-69

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 15, 1973)

BY THE COMMISSION:

1. The Commission is considering a Petition for Commission Determination, filed on September 22, 1971 by the Communications Satellite Corporation (Comsat), requesting that the Commission determine that no filing or grant fee is applicable to the launch of the INTELSAT IV (F-3) satellite, because the grant of construction authority for that satellite was made prior to the adoption of the fee schedule.

2. On September 25, 1968, the Commission adopted an Order (14 F.C.C. 2d 790) granting Comsat authority to participate in a program for the construction of four high-capacity communications satellites. This Order further stated that Comsat was not to furnish any services via such satellites without future specific authority to launch and operate those satellites. On July 1, 1970, the Commission adopted a Report and Order (23 F.C.C. 2d 880) setting forth a satellite schedule of fees; the new schedule was to be effective August 1, 1970, and to apply only to applications filed subsequent to July 1, 1970. In response to a number of petitions for reconsideration, the Commission's Memorandum Opinion and Order (28 F.C.C. 2d 139) was adopted on March 24, 1971, incorporating significant revisions, and was made retroactive to August 1, 1970. It was not until August 18, 1971, that Comsat applied to the Commission for authority to launch and operate the IV (F-3) satellite, as it was specifically required to do by the Commission's September 25, 1968 Order.[1] [2]

3. The original schedule of fees adopted on July 1, 1970, set forth a flat grant fee of $100,000 for "authority to construct and launch a

[1] Due to technical difficulties, the INTELSAT IV (F-1) has not been launched. Should it be launched in the future, it will be subject to the appropriate grant fee for launch and operation.

[2] The INTELSAT IV (F-2) was launched in January 1971. At that time, it was determined that a grant fee based on the then unitary category of construction and launch was assessable.

satellite." Comsat contended that the fee was intended to apply to the entire program of satellites, and that a fee of $10,000 per satellite would be more realistic. This contention was rejected by the Commission. However, Comsat further suggested that fees associated with satellite construction should be assessed only upon satellites which are successfully placed in orbit and are capable of providing commercial service, due to the high risk involved in launching a satellite and placing it in a usable orbit. This suggestion was incorporated into the revised fee schedule adopted on March 24, 1971, by specific separation of the fees for construction of the satellites and those for launch and operation. The former grant fee was made nominal, and the latter set at a percentage of the construction costs of each satellite, a substantially higher figure, which would be assessed only if and when the satellite was capable of commercial operation (due 45 days after successful launch and operation).

4. As stated above, at no time prior to the adoption of the schedule of fees did Comsat have authority to launch and operate the INTELSAT IV (F–3) satellite; it had authority only to construct said satellite. Application for launch authority was not filed until August 18, 1971, clearly subjecting such application to the new schedule of fees. In Paragraph 4 of Comsat's Petition, it is admitted that the statutory language is clear on its face. However, Comsat contends that the Commission did not intend that the new fee schedule be applied to the INTELSAT IV (F–3) satellite. This contention is directly contradictory to the well recognized principle of statutory construction which states that when the language of a statute is clear on its face and not ambiguous, an argument based on legislative intent cannot be used to contradict or refute the language of the statute.

5. The most important argument in Comsat's instant Petition centers around the contention that the Commission intended to establish a launch fee "related to construction authority rather than to launch and operating authority per se." Comsat contends that the launch and operation of a satellite are merely events which trigger the assessment of what amounts to a delayed construction authority grant fee. Further, Comsat contends that the two are "mutually dependent" and thus since authority to construct four satellites in the INTELSAT IV series was granted in 1968, it should not be required to pay a "retroactive" fee in 1971 or 1972 for the launch and operation of said satellites.

6. The above argument, initially attractive, is not well founded. The launch and operation authority grant fee is related to the cost of construction, but only in its mode of calculation; that is, the launch and operation grant fee is based on a percentage of the cost of construction. The two categories are not "mutually dependent" as Comsat alleges, but are two separate phases. Launch and operation authority is not granted by implication along with the grant of construction authority; rather, Comsat was specifically instructed to apply for launch and operation authority when each satellite was ready for launch. Consequently, assessment of a grant fee for such launch and operation cannot be retroactive, since no prior authority existed. A reasonable fee, properly assessable upon an application to launch and operate,

does not become arbitrarily retroactive because Comsat could not foresee its adoption.

7. Comsat states that it suggested a two-step fee program for new satellites as the most equitable arrangement in view of the risks involved in launches, but says it did not intend to agree to what it views as unfair retroactive applications of fees. However, the fee schedule is not being applied retroactively in this instance. There is no doubt that the fee schedule was in effect when Comsat sought launch authority; if, as we believe, it is reasonable to assess separate fees for construction and launch applications, there is no retroactive assessment of a fee for an application filed prior to the adoption of the fee schedule. It is true that Comsat had already embarked upon its program, with Commission approval, but we do not see why a reasonable fee, properly assessable upon an application to launch and operate, becomes arbitrarily retroactive because Comsat could not foresee its adoption.

8. Comsat also argues that application of the fee to it would be inconsistent with the applicability of the fee schedule for other common carrier services. Comsat cites footnote 4 to Section 1.1113 of the rules, which states in relevant part, "No additional fee will be charged for application for licenses to cover a construction permit unless there is a modification or variation of outstanding authority involved." But footnote 4 to Section 1.1113 does not apply to the instant situation. Footnote 4 applies only to commercial transmit/receive earth stations, receive only or portable earth stations and other such stations. Footnote 4 does not apply to applications for authority to launch and operate satellites. Thus, this footnote merely serves to point up the fact that the Commission treated different classes of authorization differently.

9. In view of the foregoing, we conclude that the assessment of a grant fee is required in accordance with the new schedule of fees adopted by the Commission on April 24, 1971 for launch and operation of the INTELSAT IV (F–3) satellite, all subsequent satellites in the INTELSAT IV program, and any other commercial satellite for which the launch and operation are authorized by this Commission.

Accordingly, IT IS ORDERED, That the Petition for Commission Determination filed by the Communications Satellite Corporation IS DENIED, and Comsat shall submit within 30 days of the release of this Order a fee of $18,910 to cover the grant fee associated with authorization for Comsat to participate in the launch and testing of the INTELSAT IV (F–3) satellite adopted December 1, 1971 (FCC 71–1209). Appropriate grant fees associated with outstanding authorizations concerning the launch and operation of other INTELSAT IV satellites and all subsequent grant fees for INTELSAT satellites will be assessed by proper notice to Comsat that such fees are due and payable.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–116

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
CRUCES CABLE CO., INC., COMPLAINANT
v.
AMERICAN TELEVISION RELAY, INC., DEFENDANT
EL PASO CABLEVISION, INC., COMPLAINANT
v.
AMERICAN TELEVISION RELAY, INC., DEFENDANT

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 16, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. We have before us a "Petition For Partial Reconsideration" filed by American Television Relay, Inc. (ATR) challenging our action of July 5, 1972 wherein we imposed a forfeiture of $500 on ATR for violating Section 203(c) of the Communications Act. (35 FCC 2d 707, 711–712; adopted June 28, 1972; released July 5, 1972).

2. ATR, a communications carrier subject to the requirements of Section 203(c) of the Act, accepted in September, 1971 a payment of $6,076 for two months service to Las Cruces, New Mexico even though there was no ATR tariff offering in effect in September, 1971 for service to Las Cruces at the monthly rate of $3,038 or any other rate. We held that this violated Section 203(c) of the Act which provides that: "no carrier . . . shall (1) charge, demand, collect, or receive a greater or less or different compensation . . . than *the charges specified in the schedule then in effect.*" (Our emphasis).

3. ATR argues in support of its Petition For Partial Reconsideration that: (1) its Tariff F.C.C. No. 8 contains a regulation which provides for receipt of two months' charges in advance; (2) although Section 203(c) of the Communications Act provides that service may not be rendered before tariffs are effective it does not prohibit the receipt of advance payments for such service; (3) and that in any event, it is unequitable to impose a forfeiture since ATR acted in good faith in relying upon the advance payment regulation in its tariff.

4. ATR's argument with respect to the tariff regulation providing for receipt of advance payments is without merit. ATR's Tariff F.C.C. No. 8, *including all charges, classifications and regulations set out therein* (our emphasis), did not become effective with respect to the

offer of service to Las Cruces until the effective date of ATR's Las Cruces filing, which was October 2, 1971. Therefore, the advance payment regulation in ATR's Tariff F.C.C. No. 8 was itself not effective until October 2, 1971 and ATR can not rely upon that regulation as justification for its action in September, 1971. We also find that ATR's interpretation of Section 203(c) of the Act is without merit. To say that, although a carrier may not provide service before there is an effective tariff but that it may nevertheless charge for such service before there is an effective tariff, is a distortion of the plain language of the statute which clearly states that *no carrier shall receive or collect any payment except at charges specified in the schedule then in effect* (our emphasis). 47 USC 203(c). Thus, under the statute, a carrier may not collect any amount that is not "specified" in the tariff and the tariff must be "in effect" at the time of collection. Moreover such an interpretation could have unreasonable results. For example, if a tariff is filed after receipt of payments and the tariff is suspended or rejected the customer would be paying for service not received. Furthermore, the customer is entitled before payment to know the "specified" amount he is obligated to pay under the tariffs and what classifications and regulations are applicable to the service he receives from the carrier. We do not believe that ATR is equitably entitled to a lifting of the forfeiture since the violation of Section 203(c) resulted from an unreasonable misinterpretation by ATR of its own tariff and a clear disregard of its duties under the plain language of Section 203(c).

5. Accordingly, ATR's Petition for Partial Reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-117

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
CRUCES CABLE COMPANY, INC., COMPLAINANT
v.
AMERICAN TELEVISION RELAY, INC., DEFENDANT
EL PASO CABLEVISION, INC., COMPLAINANT
v.
AMERICAN TELEVISION RELAY, INC., DEFENDANT

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 16, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. On July 5, 1972, we released our Memorandum Opinion and Order under this caption in which we, *inter alia*, considered and ruled on a large number of formal and informal pleadings that had been submitted by Cruces Cable Company, Inc. (Cruces) and El Paso Cablevision, Inc. (El Paso) against American Television Relay, Inc. (ATR) and by ATR in reply thereto. 35 FCC 2d 707.

2. El Paso and Cruces are CATV customers of ATR, a microwave carrier for transmission of video signals to El Paso, Texas and Las Cruces, New Mexico, respectively. The essence of the numerous pleadings by these customers was that ATR was either charging or proposing to charge El Paso and Cruces rates that were contrary to what ATR allegedly agreed to charge in written contracts with El Paso and Cruces and that such rates were otherwise unduly discriminatory or unjust and unreasonable. In the case of Cruces, all of its pleadings were directed to the monthly rate of $3,038 which ATR had put into effect to Las Cruces in its interstate tariffs on October 2, 1971. In the case of El Paso, all of its pleadings were directed to ATR's monthly rate of $9,380 for service to El Paso, Texas which was put into effect in ATR's tariff on January 19, 1972. Both Cruces and El Paso requested various forms of special, emergency and extraordinary relief, all of which were dismissed or denied by us without prejudice to their seeking appropriate relief through further action and procedures available to them. We set forth the reasons for our decisions at 35 FCC 2d 707 *et seq.*

3. We now have before us a "Joint Petition for Reconsideration" of our July 5, 1972 action filed by Cruces and El Paso (hereinafter "Petitioners") on or about August 4, 1972. Petitioners request that we order a hearing to determine whether the $3,038 rate for Cruces and the $9,380 rate for El Paso are unduly discriminatory and, if so, what relief should be granted to Cruces and El Paso.

4. We shall deny this joint petition for reconsideration for the reasons that (a) petitioners set forth no new facts or arguments in their petition that were not fully considered by the Commission in its action of July 5, 1972, and (b) by separate action on October 12, 1972 in Docket No. 19609 we instituted an investigation into the lawfulness of the rates currently being charged for service by ATR to petitioners (37 FCC 2d 751, adopted October 12, 1972; released October 18, 1972). In our October 12, 1972 action we suspended for three months the increased rates of ATR for service to petitioners and other customers and entered an accounting order providing for possible refunds. The suspended rates became effective January 11, 1973. Hearings thereon are scheduled to commence in Docket No. 19609 in the near future. Thus, insofar as petitioners have been seeking a hearing on the lawfulness of the rates they are required to pay under presently effective tariffs, such a hearing is being afforded to them in Docket No. 19609.

5. However, petitioners continue to challenge the validity of the rates that were in effect prior to January 11, 1973, i.e. the $3,038 rate to Cruces effective from October 2, 1971 to January 11, 1973 and the $9,380 rate to El Paso effective from January 19, 1972 to January 11, 1973 and each has on file with us a formal complaint wherein each attacks the validity of such prior rates and requests monetary damages for such past alleged unlawful rates. No action has been taken by us on these formal complaints which were filed November 5, 1971, in the case of Cruces, and August 4, 1972, in the case of El Paso. The question is therefore raised as to whether we should act now to designate these complaints for hearing to determine the lawfulness of these past rates while we are at the same time engaged in a hearing in Docket No. 19609 to determine the lawfulness, for the present and the future, of the current rates charged by ATR as to all its customers and as to all its service points.

6. We believe that the public interest and the ends of justice will best be served by directing our limited resources at this time to resolving the question of lawfulness of the currently effective rates of ATR, in Docket No. 19609, before considering the questions of whether or not petitioners are entitled to monetary damages for alleged unlawfulness of the past rates of ATR for service to Las Cruces, New Mexico and El Paso, Texas. The January 11, 1973 rates of ATR imposed substantial increases in rates to a total of 16 points served by ATR and to CATV customers other than petitioners, who do not challenge the past rates and who are concerned about obtaining a ruling on the lawfulness of the currently effective rates and in determining what rates they should pay for the present and future. Accordingly, we shall

defer action on the petitioners' pending formal complaints for monetary damages for allegedly unlawful rates in effect prior to January 11, 1973. Petitioners' rights will be protected in that, in order to avoid a multiplicity of suits, we will consider the pending formal complaints of petitioners as having continuing effect and thus covering the entire period prior to January 11, 1973 during which the challenged rates were being charged to petitioners.

7. In view of the foregoing, the "Joint Petition For Reconsideration" IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-182

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
MR. WILLIAM E. ERICKSON
against
WSMS-TV, WORCESTER, MASS.

ORDER

(Adopted February 14, 1973; Released February 20, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. The Commission has before it an Application for Review filed on May 8, 1972 by Mr. William E. Erickson of the ruling of the Broadcast Bureau of April 13, 1972, 34 F.C.C. 2d 604 (1972).

2. We have examined the pleadings herein and believe that the Bureau's ruling was correct. Accordingly, pursuant to Section 1.115(g) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20530

In Re Complaint by
ACCURACY IN MEDIA, INC.
Concerning Fairness Doctrine Re National Public Affairs Center for Television, Public Broadcasting Service, and Station WNET, New York, N.Y.

JANUARY 7, 1973.

ACCURACY IN MEDIA, INC.,
501 13th Street NW.,
Suite 1012,
Washington, D.C.

GENTLEMEN: This will refer to your complaint of June 19, 1972, against the National Public Affairs Center for Television (NPACT) and the Public Broadcasting Service (PBS) and your complaint of August 16, 1972, against Television Station WNET, New York, New York.

In your complaint against NPACT and PBS, you state that on April 26, 1972, WETA–TV and other stations throughout the country broadcast a one-hour program produced by NPACT and distributed by PBS entitled "Special Report: The President on Vietnam," and allege that this program violated the fairness doctrine. In particular, you state that the program began with a sixteen-minute statement by President Nixon and that the balance of the hour consisted of commentary by four persons and the moderator, Mr. Sander Vanocur, which was generally critical of the President's policy and views. You state that in introducing the panel of commentators, Mr. Vanocur remarked:

> Since the White House announcement of the President's address, we of NPACT went to work trying to arrange a politically balanced panel of individuals to discuss the issues raised by the President. Well, our panel tonight is not balanced. There's no spokesman for the Administration. And, this is not our doing.

You state that Mr. Vanocur went on to explain that NPACT had sought spokesmen from Congress or the White House to speak for the Administration, but that such attempts had not been successful; and that Mr. Vanocur had succeeded in lining up two journalists and Mr. Richard Barnet of the Institute for Policy Studies, all of whom were known to be critics of the Administration. You contend that such panel and its commentary evidence violation of the fairness doctrine.

You further allege that the program in question violated Section 396 (g) (1) (A) of the Public Broadcasting Act which requires that all

programs or series of programs be produced with strict adherence to objectivity and balance.

You had written to NPACT on May 2, 1972, regarding the program and in a letter to you dated May 30, 1972, in response to your complaint, NPACT, stated that the program was balanced since it included 16 minutes of the President's views without interruption or questioning, and that the fairness doctrine does not require that a balance of views be presented within a single program; it also cited other of its programs which, overall, were said to have provided a balanced discussion on the Vietnam issue; finally, it stated that the panelists were selected not for their critical viewpoints, but for their knowledge and expertise.

In a reply to NPACT dated June 7, 1972, you stated that NPACT's response was unsatisfactory and fails to address itself to your allegation that the program in question violated Section 396 of the Public Broadcasting Act, such allegation being the primary basis for your complaint to the Commission. In this regard, you contended that the fact that a member of Congress or an official of the Administration was not available did not excuse NPACT from its obligation to provide a balanced panel, and that there was no evidence that NPACT made any effort to find a journalist or scholar who would have had a viewpoint more supportive of the President.

You request that the Commission find NPACT and PBS in violation of Section 396(g)(1)(A) of the Public Broadcasting Act and the fairness doctrine and issue an order instructing those parties to produce a program on the Administration's Vietnam policy which will rectify the imbalance of the April 26 program. You also seek an order advising against any future production of similarly unbalanced programs.

In your complaint against WNET, you state that on May 9, 1972, the station broadcast a program entitled "Free Time" which featured David Halberstam, Daniel Ellsberg, David Dellinger, and Richard Barnet and discussed the Administration's Vietnam policies, as well as the personal character and motivation of the President in formulating and pursuing such policies. You allege that the program "subjected" these topics "to a completely unbalanced and violent assault" and was violative of the fairness doctrine in that no opposing or contrasting views were presented. You also allege that this program represents a consistent pattern of one-sided and unbalanced presentations by WNET over a substantial period of time. You further state that on May 16, 1972, WNET broadcast a discussion of the Administration's decision to assist South Vietnam in resisting invasion from the North and presented the anti-Administration views of Jane Fonda and Tom Hayden. You allege that this program was also one-sided in the views which were presented and hence violative of the fairness doctrine.

You had written to WNET on June 6, 1972, and in a letter to you dated June 13, 1972 in response to your complaint, WNET stated that its entire programming, since the beginning of 1972, had presented a balance of contrasting views on issues associated with United States'

involvement in Vietnam and was in full compliance with the fairness doctrine.

In your August 16 letter to the Commission you stated that although WNET cited interviews with members of Congress and other supporters of the Administration's Southeast Asian policies as evidence of its compliance with fairness, a number of these programs were broadcast prior to the events which were the subject of the May 9 and 16 presentations and it remains to be demonstrated that any of these programs were specifically addressed to the remarks which were broadcast in the later "Free Time" and Fonda-Hayden discussions. In this regard, you contend that the fairness doctrine requires that pro-Administration spokesmen have an opportunity to address themselves to the specific remarks and issues raised by Jane Fonda and David Halberstam. You also allege that WNET has consistently assaulted the Government's Vietnam policy and has failed to afford substantial opportunity for proponents or supporters of that policy to present their views on the issues involved. You request the Commission to find WNET in violation of the fairness doctrine and to issue an order directing the station to produce a program which will present views supportive of the Administration's Vietnam policy and opposing those presented in the programs of May 9 and 16.

To the extent that your complaint against NPACT and PBS is based on Section 396(g)(1)(A) of the Public Broadcasting Act, which is applicable to the Corporation for Public Broadcasting, your attention is invited to the Commission's letter to you, dated January 23, 1973, footnote 1.

Since your instant complaints appear to raise similar fairness doctrine issues and involves the same fairness principles, they are reviewed here together.[1] Under the fairness doctrine, if a broadcaster presents one side of a controversial issue of public importance, he is required to afford reasonable opportunity for the presentation of contrasting views. In laying down guidelines for the implementation of this general principle of fairness, the Commission has stated:

> . . . it should be remembered that there is no mechanical requirement or formula for achieving fairness. The broadcaster need not balance editorial for editorial or viewpoint for viewpoint. Moreover, there is no requirement that a licensee achieve a balance of opposing views within a single broadcast or even that he present opposing views on the same series of programs. . . . What is required is that the broadcaster take affirmative steps to afford a reasonable opportunity for presenting contrasting viewpoints on controversial issues of public importance in the station's *overall* programming. *Wilber E. Schonek*, 19 FCC 2d 840, 841 (1969). (Emphasis added).

In conformity with this "overall programming" standard of licensee performance under the fairness doctrine, the Commission requires that a complainant establish, *inter alia*, reasonable grounds for the claim that a station or network has presented only one side of a controversial issue of public importance and has not afforded reasonable opportunity in its overall programming for the presentation of contrasting views on that particular issue. See *Allen C. Phelps*, 21

[1] We note that NPACT is neither a network or licensee, but only a program producer for PBS.

F.C.C. 2d 12 (1969). As the U.S. Court of Appeals for the District of Columbia recently held:

> On a complaint under the fairness doctrine, the burden is on the complainant not only to define the issue, but also to allege and point specifically to an unfairness and imbalance in the programming of the licensee devoted to this particular issue. It is not enough for the complainant to allege there is a controversial issue on which the complainant wants to be heard on the licensee's station. The essential element in invoking the fairness doctrine is that the licensee has not hitherto provided fair and balanced programming on this particular issue, and therefore, and only therefore, can the complainant assert a right for someone to be heard to rectify the existing imbalance. *Healey* v. *F.C.C.*, 460 F. 2d 917, 921 (D.C. Cir. 1972).

Review of your complaint of June 19 against PBS according to these principles fails to provide reasonable grounds for a finding that PBS has not afforded reasonable opportunity in its overall programming for a balanced discussion of contrasting views on the subject of Vietnam. Assuming that there may have been an imbalance of views presented in the program "Special Report: The President on Vietnam", this does not, by itself, indicate that PBS has failed to comply with fairness. In this connection, it is noted that in its response to you of May 30, NPACT included a summary list of PBS programming on the subject of the Vietnam War presented during the previous five months and stated:

> This list shows that, in addition to the airing of three prime-time programs featuring Presidential addresses on this subject, PBS has offered programs devoted exclusively to Vietnam on "Firing Line," "This Week," and "The Advocates," featuring the viewpoints of members of the Administration, Congressmen from both political parties, newsmen, and Viet Cong and South Vietnamese Government officials, including two half-hour interviews with President Thieu; that PBS also recently offered four and a half hours of the testimony of two chief Administration spokesmen, Secretary of State William Rogers and Secretary of Defense Melvin Laird, on Vietnam before the Senate Foreign Relations Committee; that in addition to these special programs on the Vietnam issue, many recent interviewees on "Thirty Minutes With" have addressed this subject from varying viewpoints, including such Administration officials or supporters as Defense Secretary Melvin Laird, Admiral Thomas Moorer, Chairman of the Joint Chiefs of Staff, Special Presidential Assistant Patrick Buchanan, and Senator John Tower. Ongoing Vietnam developments have been discussed on a weekly basis on "World Press" and "Washington Week in Review."

The summary of PBS public affairs programming from January 1 to May 18, 1972, indicates that PBS presented twelve programs devoted in their entirety to topics related to Vietnam, seven individuals who appeared on the program "Thirty Minutes With . . ." and discussed the war, two program series providing updated coverage of developments in Vietnam by television journalists, and four other special programs during which Vietnam was discussed. Upon these uncontradicted statements of fact, it would appear that PBS' overall programming on the subject of Vietnam presented a balance of contrasting viewpoints and that no violation of the fairness doctrine is evident.

Review of your complaint of August 16 against WNET also fails to disclose reasonable grounds for your claim that the station has not afforded reasonable opportunity, in its overall programming, for

109-028—73——2

the presentation of views supportive of the Administration's Vietnam policies and contrasting with those expressed by the anti-war spokesmen who appeared in the two particular programs which you cited. In this regard, it is noted that in its response to you dated June 13, WNET directed your attention to numerous programs broadcast from January to May of 1972 which presented the views of various Administration spokesmen and supporters on the Vietnam issue, including those of Melvin Laird ("Thirty Minutes With . . .," January), the President (State of the Union address, January and "This Week", 5/10/72), Ambassador Ellsworth Bunker ("Firing Line", 2/6/72), South Vietnam's President Thieu ("This Week", 3/29/72 and 4/5/72), Senator Robert Dole ("Thirty Minutes With . . .", 4/3/72), Congressman Robert Price ("Thirty Minutes With . . .", 5/4/72), Senator John Tower ("Thirty Minutes With . . .", 5/18/72), and Secretary of State William Rogers (Testimony before Senate Foreign Relations Committee, 3 hrs., April). Upon these facts, it does not appear that WNET has failed to present pro-Administration viewpoints in its overall programming on Vietnam, nor have you provided evidence that the station has engaged in a "consistent pattern of assault" on the President's Vietnam policies. Again, it should be emphasized that the proper standard of licensee performance under the fairness doctrine is its overall programming on a given controversial issue of public importance, and the fact that a particular program or even a series of programs presents only one side of such issue does not mean that the fairness doctrine has been violated. Absent reasonable grounds for concluding that a station has not afforded reasonable opportunity for the presentation of contrasting views in its overall programming, no Commission inquiry or action is warranted. No such grounds are evident here.

You also contend that WNET is obligated to afford time to Administration spokesmen to specifically counter the views expressed by Jane Fonda and Tom Hayden in their May 16 appearances. However, you have submitted no information or material allegation to support a claim that such views and remarks of Fonda and Hayden presented one side of any controversial issue of public importance that is separate and distinct from the overall issue of American policy in Vietnam as recognized and discussed in the station's overall programming. In essence, your contention argues for the application of the fairness doctrine on a statement-for-statement, or viewpoint-for-viewpoint basis, an approach to fairness which has been rejected by the Commission. As the Commission stated in *National Broadcasting Co.* (AOPA complaint), 25 FCC 2d 735 (1970):

> Clearly, the licensee must be given considerable leeway for exercising reasonable judgment as to what statements or shades of opinion do require offsetting presentation. If every statement, or inference from statements or presentations, could be made the subject of a separate and distinct fairness requirement, the doctrine would be unworkable. More important, . . . such a policy of requiring fairness on each statement or inference from statements would involve this agency much too deeply in broadcast journalism. We would become an integral part of broadcast journalism, passing on thousands of complaints that some statement, or inference to be drawn from a statement, on a newscast or other news show had not been offset by a countering presentation. A policy

of requiring fairness statement by statement or inference by inference, with constant Governmental intervention to try to implement the policy, would simply be inconsistent with the profound national commitment to the principle that debate on public issues should be "uninhibited, robust, wide-open." 25 FCC 2d at 736-37.

For the above reasons, it does not appear that further Commission action is warranted on either of your complaints.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73-141

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
COMPLAINT BY FRIENDS OF THE EARTH CONCERNING FAIRNESS DOCTRINE RE STATION WNBC-TV, NEW YORK, N.Y.

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 16, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. In a letter dated August 5, 1970 to Friends of the Earth (FOE), the petitioner herein, the Commission reviewed petitioner's contentions that WNBC-TV was carrying commercials for high powered cars and leaded gasolines, that these commercials constituted discussion of one side of a controversial issue of public importance, and that the station was not adequately presenting the other side. The Commission concluded that the general product advertisements before it did not constitute discussion of one side of a controversial issue. *In Re Complaint by Friends of the Earth Concerning Fairness Doctrine Re Station WNBC-TV, New York, N.Y.*, 24 FCC 2d 743. The Commission's decision was appealed to the United States Court of Appeals for the District of Columbia Circuit. The Court found that this case was indistinguishable from our cigarette advertising opinion,[1] which held that cigarette advertisements presented one side of a controversial issue, and remanded the case to the Commission for a determination of whether the licensee was satisfying its fairness doctrine obligations by carrying a reasonable amount of information on the other side of the issue. *Friends of the Earth* v. *F.C.C.*, ——— U.S. App. D.C. ———, 449 F. 2d 1164 (D.C. Cir. 1971).

2. On November 18, 1971, the Commission asked the parties for a statement of their views on what would constitute an appropriate past period for which data should be obtained. Comments were requested on whether advertisements for small cars and non-leaded gasoline were part of the discussion of the issue, and comments were also requested on related problems of reviewing past broadcasts of such advertisements.

[1] *Applicability of the Fairness Doctrine to Cigarette Advertising*, 8 FCC 2d 381, petitions for reconsideration denied, 9 FCC 2d 921 (1967), affirmed *sub nom. Banzhaf* v. *F.C.C.*, 132 U.S. App. D.C. 14, 405 F. 2d 1082 (1968), *cert. den. sub nom. Tobacco Institute* v. *F.C.C.*, 396 U.S. 842 (1969).

3. After receiving filings and responses from the parties the Commission, on February 22, 1972, in an *Interim Memorandum Opinion and Order on Remand* found that a review of past programming for one year was appropriate and that four months was a reasonable period of time within which to allow the licensee to complete the review. See *Interim Memorandum Opinion and Order on Remand*, 33 FCC 2d 648. In addition, due to the continuing nature of the issue, the Commission ordered the National Broadcasting Company (NBC), to the extent that it was currently carrying advertisements for large engine automobiles and leaded gasolines of the type relied upon by FOE, to advise the Commission within twenty days of its current plans for making available a reasonable opportunity for the presentation of the opposing viewpoint.

4. In an Order adopted March 22, 1972, the Commission granted NBC's request for additional time to study its response to the Commission's February 22 *Interim Memorandum Opinion and Order on Remand*. In the meantime, however, NBC and FOE agreed that amicable termination of the proceedings in this case would best serve the public interest. The parties agreed that a review of WNBC's past programming presented special problems in that some dispute existed over the proper past period to be covered and also as to whether advertising for small automobiles may have been an appropriate fairness response to advertising of large automobiles. Additionally, any review of WNBC–TV's past programming would have necessitated a great deal of time and expense. The parties have also agreed that in view of the forthcoming promulgation by the Commission of new guidelines with respect to the fairness doctrine in Docket No. 19260 some of the issues involved in this proceeding would be superseded.

5. In the light of these considerations and FOE's belief that a settlement would facilitate the concentration of energies on present and future programming dealing with automobile pollution, the parties propose that the proceeding be discontinued. We note that in making this proposal FOE took account of the cooperative response of Station WNBC–TV to the request of the City of New York for the assistance of broadcasters in a campaign to focus public attention on automobile-produced air pollution problems in the New York City area, including plans for substantial treatment of these issues.

6. In light of the motion before us and the grounds for it set forth above, IT IS ORDERED, That the proceeding on the complaint of Friends of the Earth against WNBC–TV IS HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
HERSCHEL KASTEN, KASKASKIA JUNIOR COLLEGE, HOFFMAN, ILL.
Concerning Fairness Doctrine Re Station
WILY, Centralia, Ill.

FEBRUARY 14, 1973.

MR. HERSCHEL KASTEN,

Member of the Board of Trustees, Kaskaskia Junior College, Box 102, Hoffman, Ill.

DEAR MR. KASTEN: This is in response to your letter of complaint, dated July 10, 1972, against Standard Broadcast Station WILY, Centralia, Illinois.

We regret that we are just now able to respond to your letter, but the staff was for many months swamped with complaints and inquiries related to the 1972 primaries, conventions and general elections, which would have become moot unless they were resolved at once. Therefore, it was necessary to postpone consideration of your complaint which normally we would have dealt with much earlier.

You allege that the general manager of Station WILY broadcast false and misleading editorials which contained personal attacks against you. You state that the station offered you time to reply to the editorials, but that you were "advised against replying and so did not."

You enclosed a tape of two of the editorials, and review of these broadcasts indicates that the editorials concerned the proposal to replace President Eugene McClintock of Kaskaskia Junior College. The editorials, which supported the president, stated that "a local man is being persecuted, accused without facts, belittled and harassed"; that the president is being "pilloried"; that animosity toward his administration is automatic with respect to almost everything which it proposes; that the opposition has launched a "vindictive, malicious, and irresponsible" campaign against Mr. McClintock; that you are not qualified to be President of the College since you do not have the requisite background or college credits; that the station manager would choose Mr. McClintock over you for the office; that you should resign from the Board of Trustees of the College; and that the dissension at the College was "fostered and encouraged by small, yes, let's say even a very small faculty member" with your support. The editorials also stated that the station had invited the Board members to air their views; that some have accepted; and that others, including yourself, had refused. The later editorial repeated the station's offer of free time to the Board members and also offered "equal time" to those with contrasting views.

You request the Commission to review this matter pursuant to applicable rules and policy, and, in particular, direct attention to the broadcast of "mistaken 'facts' " in the editorials as evidence that the station has ignored your community's "right to hear unbiased reporting, editorializing, and interviewing."

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material, including station editorials.

However, when, during the presentation of views on a controversial issue of public importance, an attack is made upon an identified person or group, it is the duty of the licensee to notify the person or group attacked, to send a recording, transcript or as accurate a summary as possible, and to afford an opportunity for a response. A personal attack, within the meaning of the Commission's Rules, is an attack "upon the honesty, character, integrity or like personal qualities of an identified person or group." In this regard, mere mention of a person or group, or even certain types of unfavorable references thereto, does not constitute a personal attack as so defined. Thus, rulings of the Commission have distinguished between remarks which question or dispute the judgment or wisdom of a particular individual or group and those which cast aspersions on a person or group's honesty, character or integrity. Only the latter constitute personal attacks within the meaning of the Rules. As the Commission stated in *The Port of New York Authority*, 25 F.C.C. 2d 417, 418 (1970): "We have made clear before that strong disagreement, even vehemently expressed, does not constitute a personal attack in the absence of an attack upon character or integrity." Review of the editorial remarks in question indicates that although those opposing the president, including yourself, were vehemently criticized for such opposition and your qualifications for the office of President of the College were sharply questioned, such statements did not attack or otherwise impugn your honesty, character or integrity in opposing Mr. McClintock or seeking such office, and, therefore, did not constitute personal attacks as defined by the Rules.

If a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can

be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

Your letter contains no allegation that Station WILY has not afforded reasonable opportunity for the presentation of contrasting views on any controversial issue of public importance discussed in the editorials in question, nor is there any other evidence to indicate that the station has failed to comply with the fairness doctrine with respect to this matter. It is noted that both you and the other members of the Board of Trustees, as well as any others having contrasting views, were offered "equal time" by the station to reply to its editorials, and that some Trustees accepted such offer, although you did not. Upon these facts, it would appear that the station has taken appropriate steps to comply with its fairness doctrine obligations. Should the Commission receive information to the contrary, it will undertake such review and action as appears appropriate to the circumstances.

With respect to the accuracy of program material or allegations that a network, station or newscaster has distorted news or has staged or fabricated news occurrences, the Commission's policy is set forth in its *Letter to Mrs. J. R. Paul*, 26 F.C.C. 2d 591 (1969), a copy of which is enclosed. As you will note, the Commission believes that it, as the governmental licensing agency, should not attempt to determine the "truth" of a given situation and whether a news report has given the "truth". Rather, it will take action in such cases only when it has substantial extrinsic evidence that the licensee has deliberately distorted its news reports or staged news events and otherwise deems it more appropriate to assure that a reasonable opportunity is afforded for the presentation of contrasting views.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief*,
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
TEXAS COMMITTEE ON NATURAL RESOURCES,
DALLAS, TEX.
Concerning Fairness Doctrine Re Station
WBAP, Fort Worth, Tex.

FEBRUARY 12, 1973.

MR. EDWARD C. FRITZ,
Texas Committee on Natural Resources,
4144 Cochran Chapel Road,
Dallas, Tex.

DEAR MR. FRITZ: This refers to your letters of complaint against Station WBAP, Fort Worth, Texas, alleging failure of the licensee to comply with the requirements of the fairness doctrine in its presentation of viewpoints on the Trinity River Navigation Project and to the licensee's responses. We note that copies of the licensee's responses, including those dated December 13, 1972 and January 18, 1973, were sent to you.

The staff regrets its delay in dealing with your complaints. However, it was overwhelmed with complaints and inquiries related to the various political campaigns until Election Day, and therefore was forced to defer action on many other complaints, some of which it is only now able to resolve.

After careful analysis of your complaints and the licensee's responses, including those of December 13, 1972 and January 18, 1973, the staff cannot find the licensee's judgment to have been unreasonable regarding presentation of contrasting views here in issue. As you know, the Commission reviews fairness complaints only to the extent of determining whether the licensee's actions appear to have been reasonable and made in good faith.

We note, also, that the issue here is a continuing one, to which the station appears to be giving continuing coverage. In such situations, it is impossible to set a "cut-off" point for determination of fairness. However, although the presentation of views favoring the Trinity River Project appears to date to have occupied more air time on WBAP–TV than that of opposing views, an analysis of the material furnished by the licensee indicates that the disparity was not of a degree that would justify a determination that the licensee's judgment was unreasonable. As you know, the fairness doctrine does not require equality in time afforded opposing views such as is required for political candidates, but only that the licensee, having presented one viewpoint, afford reasonable opportunity for presentation of contrasting views.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
VOTERS ORGANIZED TO THINK ENVIRONMENT,
SAN DIEGO, CALIF.
Concerning Fairness Doctrine
Re Station KGTV

FEBRUARY 12, 1973.

MR. ALEX LEONDIS,
Chairman, Voters Organized To Think Environment,
5068 Windsor Drive,
San Diego, Calif.

DEAR MR. LEONDIS: This will refer to your letter of complaint, dated October 27, 1972, which was not received in this office until November 6, 1972, alleging that Television Station KGTV, San Diego, California, "has failed to provide equal coverage of political opinions expressed in their broadcasts." In particular, you state that your organization was the sponsor of "Proposition D" on the November 7 San Diego Ballott which would limit the height of buildings in the coastal zone of the city to 30 feet; that in an editorial broadcast October 17, Station KGTV expressed its opposition to the proposition in question; and that on October 18 the station broadcast an interview with a member of the City Planning Commission who urged rejection of the measure. You further state that although KGTV offered your organization "equal time" to rebut the October 17 editorial, the station refused your request for "equal time to interview another member of the City Government who has the opposite opinion from that expressed on October 18." You have asked the Commission to review the propriety of such refusal.

If a station presents one side of a controversial issue of public importance, it is required under the fairness doctrine to afford reasonable opportunity for the presentation of contrasting views. The fairness doctrine does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views. It is within the discretion of the licensee to determine how best to present contrasting views with respect to matters of spokesman selection and program scheduling, format, and content and that the burden is on the complainant to show that the licensee has not acted reasonably and

in good faith. See *Letter to the Honorable Oren Harris*, 40 F.C.C. 2d 582 (1963); *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 Fed. Reg. 10416 (1964) (A copy of which is enclosed for your further information).

Applying these principles to your complaint, it does not appear that Station KGTV has failed to comply with the fairness doctrine with respect to the issue in question. Upon presenting its October 17 editorial in opposition to Proposition D, the station offered your organization, as sponsor of the measure, "equal time" to rebut the editorial. The correspondence which you have submitted indicates that such offer was accepted by your organization. Although the station refused your request for "equal time" to interview a particular member of city government whose views were opposed to those of the City Planning Commission member which were broadcast October 18, such refusal alone does not evidence that the station has not afforded a reasonable opportunity for the presentation of contracting views on the ballot proposition in question. As noted above, the licensee is not required to balance editorial with editorial or viewpoint with viewpoint according to a precise mathematical formula of "equal time". Nor is the licensee obligated to present the views of any particular group or individual. The underlying and controlling consideration in any question of fairness is whether the public has been afforded reasonable opportunity to inform itself on the particular controversial issue involved as evidenced by the entirety of viewpoints which have been presented in the station's overall programming on that issue. See *Red Lion Broadcasting Co.* v. *F.C.C.*, 395 U.S. 367 (1969). In this regard, fairness is most concerned with the views which have been broadcast, not with the particular spokesmen which have been presented. You have submitted no information to indicate that KGTV, in its overall coveral of Proposition D (as opposed to the particular editorial, interview, and offer which you cite), has failed to afford reasonable opportunity for the presentation of contrasting views on that issue and thereby failed to recognize the right of the public to be fully informed. Thus, upon the facts which you have submitted, no violation of the fairness doctrine is evident.

The delay in answering your complaint is regretted; however, due to the late date of receipt of your letter, staff limitations, and the increased volume of complaints before the Commission regarding the recent elections, this response could not be forwarded until the present time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief*,
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73–151

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re FORT SMITH TV CABLE CO., FORT SMITH, ARK. For Certificate of Compliance	CAC–24 (AR016)

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. Fort Smith TV Cable Company (FSTC) operates a cable television system at Fort Smith, Arkansas, in a smaller television market. The system presently provides its subscribers with the following television signals:

KTEW (NBC, Ch. 2), Tulsa, Oklahoma
KOTV (CBS, Ch. 6), Tulsa, Oklahoma
KTUL–TV (ABC, Ch. 8), Tulsa, Oklahoma
KFSA–TV (ABC/CBS/NBC, Ch. 5), Fort Smith, Arkansas
KFPW–TV (ABC/CBS/NBC, Ch. 40), Fort Smith, Arkansas
KARK–TV (NBC, Ch. 4), Little Rock, Arkansas
KATV (ABC, Ch. 7), Little Rock, Arkansas
KETS (Educ. Ch. 2), Little Rock, Arkansas
KTHV (CBS, Ch. 11), Little Rock, Arkansas
KGTO–TV (NBC, Ch. 36), Fayetteville, Arkansas

On March 14, 1972, FSTC filed, and subsequently amended, an application for a certificate of compliance proposing to add the following television signals:

KTVT (Ind., Ch. 11), Fort Worth, Texas
KDTV (Ind., Ch. 39), Dallas, Texas

Public notice of the application was given April 12, 1972. On May 12, 1972, KFPW Broadcasting Company, licensee of Station KFPW–TV, Fort Smith, Arkansas, filed an opposition, and FSTC has replied.

2. In its application, FSTC avers that it was authorized to carry KTVT and KDTV prior to March 31, 1972, pursuant to former Section 74.1105 of the Commission's Rules. FSTC contends that since the proposed signals were authorized, their carriage is grandfathered under the provisions of Section 76.65 of the Rules. KFPW–TV objects to the proposed carriage of the distant signals on the grounds that the addition of two independent signals will have an adverse

impact on the station's viewing audience. Notwithstanding the grandfathering provisions of Section 76.65 of the Rules, KFPW–TV argues that the Commission should apply the smaller market limitations of the Rules, restricting FSTC to one independent signal, since the system has never actually commenced carriage of either proposed signal.

3. We find that FSTC served proper notice of its intention to carry the proposed signals on all entitled parties, pursuant to former Section 74.1105 of the Rules. Since no objection to that notification was filed by any party, including KFPW–TV, we hold that FSTC fully complied with the provisions of the former rules and was authorized to carry the proposed signals prior to March 31, 1972. See *El Paso Cablevision, Inc.*, 27 FCC 2d 835 (1971). Therefore, carriage of KTVT and KDTV is grandfathered under the provisions of Section 76.65 of the Rules. As to KFPW–TV's argument that the Fort Smith cable system should not be permitted to carry the proposed signals because carriage of those signals was never commenced, we note that when the Commission reaffirmed the provisions of Section 76.65 on reconsideration, we stated at 36 FCC 2d 326, 351: "We will not disturb signals where rights have vested, even where the system has not gone into operation." The same judgment applies in the instant case where the right to carry particular signals has vested in an existing system by operation of former Section 74.1105; we will not disturb that right merely because carriage of the proposed signals has not commenced.

4. Turning to KFPW–TV's audience impact assertions and its request for special relief, the Commission addressed itself to such matters in paragraph 112 of the *Cable Television Report and Order*, 36 FCC 2d 143, 186–187 where it stated:

> We will, of course, consider objections to signal carriage applications and have retained special relief rules, but those seeking signal carriage restrictions on otherwise permitted signals have a substantial burden. Before restrictions are imposed in such cases, there will have to be a clear showing that the proposed service is not consistent with the orderly integration of cable television service into the national communications structure and that the results would be inimical to the public interest.

KFPW–TV has made no showing to support its assertion that the proposed signal carriage will have an adverse impact on the station's viewing audience, and has not otherwise met the "substantial burden" which the Commission has placed upon a party seeking carriage restrictions on otherwise permitted signals.

In view of the foregoing, the Commission finds that the grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Application of Fort Smith TV Cable Company" filed by KFPW Broadcasting Company IS DENIED.

IT IS FURTHER ORDERED, That the application (CAC–24) filed by Fort Smith TV Cable Company, Inc. IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 73R-74

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ERWIN GLADDENBEGK, SHELL LAKE, WIS.	Docket No. 19211 File No. BPH-7192
CHARLES R. LUTZ, SHELL LAKE, WIS. For Construction Permits	Docket No. 19212 File No. BPH-7262

APPEARANCES

Samuel Miller, on behalf of Erwin Gladdenbegk; *Joseph M. Oliver, Jr.*, on behalf of Charles R. Lutz; and *John T. Kelly*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted February 9, 1973; Released February 14, 1973)

BY THE REVIEW BOARD: NELSON, PINCOCK AND KESSLER

1. The above-captioned mutually exclusive applications for a new FM broadcast station to operate on 95.3 MHz at Shell Lake, Wisconsin, were designated for consolidated hearing by Commission Order, FCC 71-406, released April 21, 1971, 36 FR 8413. The issues encompassed inquiries into each applicant's efforts to ascertain community needs and interests and a comparison of the two applicants. The hearing was conducted before Administrative Law Judge, Millard French, who, in his Initial Decision FCC 72D-22, released March 28, 1972, found that both applicants had complied with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicant* 27 FCC 2d 650 (1971), and that the public interest would best be served by granting the application of Erwin Gladdenbegk and denying the mutually exclusive application of Charles R. Lutz. Both applicants filed exceptions to the Initial Decision and Lutz requested oral argument thereon. The Board has considered the Initial Decision, the exceptions thereto, the oral argument [1] and the record in this matter and is satisfied that the Initial Decision is correct. Therefore the Initial Decision as supplemented by our rulings on the exceptions set forth in the attached appendix is adopted by the Review Board.

2. Accordingly, IT IS ORDERED, That the application (BPH-

[1] Oral arugment before a panel of the Review Board was held on January 30, 1973.

7192) of Erwin Gladdenbegk IS GRANTED, and the application (BPH–7262) of Charles R. Lutz IS DENIED.

DEE W. PINCOCK,
Member, Review Board,
Federal Communications Commission.

APPENDIX

RULINGS ON THE EXCEPTIONS OF CHARLES R. LUTZ

Exception No.	*Ruling*
1	*Denied.* The only specific reference to the Indian population is at Tr. 67 where Mr. Lutz stated that there is an Indian reservation on the west side of the banks of the Bashaw with a population of 38 Indians, and at Tr. 45 where mention is made of an Indian reservation at Clam Falls, described as being "in that general area, west of Cumberland." The material in Lutz's application which was cited in the exceptions is not a part of the hearing record. The Initial Decision at ¶ 6 fairly reflects the record.
2, 4	*Denied.* It is apparent from the accompanying descriptive material that each person listed in paragraphs 17 and 19 is in fact a community leader. Gladdenbegk's failure to list community leaders and members of the general public separately, while not the most effective way to present the information, does not destroy the exhibit's usefulness.
3	*Denied.* It is apparent from the accompanying descriptive material that the persons listed in ¶ 18 were properly classified by the Presiding Judge as members of the general public.
5	*Denied.* We cannot accept Lutz's contentions that Gladdenbegk has failed to adequately interview a cross section of community leaders and the public to ascertain the needs and interests of the area to be served. Lutz contends that American Indians constitute a "significant group" within Gladdenbegk's proposed service area and that because Gladdenbegk failed to interview Indian leaders he has not met his burden of proof under the *Suburban* issue and his application must therefore be denied. Lutz's argument must fall because the record does not support his contention that American Indians constitute a "significant group" within the proposed service area. There is no evidence that any Indians reside in Shell Lake, the applicant's principal community. Moreover, it is not clear from the record whether Clam Falls which is described at Tr. 45 as west of Cumberland is within the 1 mv/m contour of Gladdenbegk's proposed station. Gladdenbegk complied with the requirements of the *Primer, supra* by submitting demographic data concerning Shell Lake and Washburn County. He then proceeded to make his survey based on that data. In this connection, Lutz concedes (Brief in Support of Exceptions, Fn*) that exact and complete figures for the alleged Indian population do not appear in the record. In such a situation it is clear that if Lutz had knowledge of such populations and wished to challenge the adequacy of Gladdenbegk's survey, it was his responsibility

Exception No.	*Ruling*
	to show by means of supporting data, that significant groups were omitted. *Primer, supra* at page 663. This he has not done. Neither has Lutz rejected Gladdenbegk's testimony that his attempts to "get ahold" of Indian leaders has been an impossible job (Tr. 45).
6	*Denied.* Both applicants purport to devote full time to the management of the proposed FM station and both have other business obligations. The Presiding Judge's conclusion that neither applicant is to be preferred for his integration into the management of the station is fully warranted by the record.
7	*Denied* In the circumstances of this case, Gladdenbegk, who has only a small CATV system which originates no local programming, must be preferred over Lutz who owns the only AM station in the community and who proposes to simulcast during the hours his daytime only station operates.
8	*Denied.* The record and the findings of fact fully support the Presiding Judge's conclusion.
9, 10	*Denied* for the reasons set forth in the foregoing rulings.

RULINGS ON EXCEPTIONS OF ERWIN GLADDENBEGK

Exception No.	*Ruling*
1, 2, 3	*Denied:* In view of all the facts in this case the additional findings and conclusions concerning Lutz's ascertainment of communty needs are not required.

109 028—73—3

F.C.C. 72D-22

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ERWIN GLADDENBEGK, SHELL LAKE, WIS.	Docket No. 19211 File No. BPH-7192
CHARLES R. LUTZ, SHELL LAKE, WIS. For Construction Permits	Docket No. 19212 File No. BPH-7262

APPEARANCES

Stephen A. Gold and *Samuel Miller*, on behalf of Erwin Gladdenbegk; *Charles R. Lutz*, pro se; and *John T. Kelly*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER MILLARD F. FRENCH

(Issued March 24, 1972; Released March 28, 1972)

PRELIMINARY STATEMENT

1. By order released April 29, 1971 the Commission designated for hearing the applications of Erwin Gladdenbegk (hereinafter Gladdenbegk) and Charles R. Lutz (hereinafter Lutz), each requesting a construction permit for a new FM station to be operated on Channel 237 at Shell Lake, Wisconsin, upon the following issues:

1. To determine the efforts made by Erwin Gladdenbegk to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.
2. To determine the efforts made by Charles R. Lutz to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.
3. To determine which of the proposals would, on a comparative basis, better serve the public interest.
4. To determine in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications for construction permit should be granted.

With the exception of these specified issues, the order provided that "the applicants are qualified to construct and operate as proposed."

2. In the designation order, the Commission stated that under the standard comparative issue consideration would be given to the areas and populations which each applicant would serve with the 1 mv/m contour, together with the availability of other primary aural services in such areas.

3. A prehearing conference was held on June 8, 1971. Exhibits were exchanged between the parties on September 16, 1971. The hearing in

this proceeding was held on November 1, 1971, and the record was closed on that date.

4. Proposed findings and conclusions were filed by the Broadcast Bureau, by Gladdenbegk and by Lutz on January 12, 13 and 17, 1972, respectively. Lutz filed reply findings and conclusions on February 7, 1972.

FINDINGS OF FACT

5. This proceeding involves two mutually exclusive applications for construction permits to establish a new Class A FM broadcast station at Shell Lake, Wisconsin, to operate on Channel 237A (95.3 MHz) with an effective radiated power of 3 kilowatts. Erwin Gladdenbegk proposes to construct at a site about 5 miles south-southwest of Shell Lake with an antenna height of 300 feet above average terrain. Charles R. Lutz proposes to mount his antenna on the existing tower of WCSW (AM) which is about 4 miles south-southwest of Shell Lake and attain a height of 265 feet above average terrain.

6. Shell Lake is in northwestern Wisconsin about 70 miles south of Superior, Wisconsin, and 80 miles northeast of Minneapolis, Minnesota. Shell Lake has a 1970 population of 928 and is the county seat of Washburn County (population 10,601). The largest community in Washburn County is Spooner, which has a population of slightly over 2,400. The only other community of substantial size within the proposed 1 mv/m contour is Cumberland (population 1,839) which is located in the adjacent county of Barron. Located west of Cumberland is an Indian reservation. Washburn County is very sparsely populated with only 13 persons per square mile. The county is almost completely white, with only 14 blacks in the entire county (1970 Census). However, 24.2% of the county's population is of foreign stock. The county has an unusually high proportion of people 65 and over, with 16.4% of the population in that category, as compared with 10.2% for the state. The nearest urbanized area and the nearest SMSA are centered about Duluth and adjacent Superior City, Wisconsin. The only broadcast station in Shell Lake is WCSW (940 kHz, 1 kw, day, II) which is licensed to applicant Lutz.

7. According to the 1960 Census, 13% of the work force was engaged in manufacturing, with 34% in white collar work. The median income per family is lower than the state average—$3,859 compared with $5,926 for the state. The county has $8,566,000 in bank deposits with a tax base of only $98 per capita (1964 Census). The county has 27 manufacturing establishments (1963 Census). There are 209 retail establishments with a payroll of $16,302,000 (1963 Census). The county is largely dependent on agriculture for its economy. There are 695 farms with 31.5% of the land in farms (1964 Census). The average farm has 237 acres and sells $5,979 worth of products per year. Shell Lake is noted for the following industries and products: boatworks, creameries, cheese factory, dairy, poultry, corn, peas and potatoes, with farming being the chief occupation.

8. Although both proposals would serve more than 500 square miles of area, neither would serve as many as 16,000 persons within their

1 mv/m contours. Neither proposed contour would reach Rice Lake. Statistics on their coverage are as follows:

	Area (sq. mi.)	Population
Gladdenbegk	713	15,429
Lutz	592	13,518
Difference	121	1,911

9. Gladdenbegk's proposed 1 mv/m contour would encompass all of the Lutz 1 mv/m contour and additionally extend 2 to 3 miles farther from Shell Lake in southerly and westerly directions to serve 1,911 more persons in an area of 121 square miles. Thus Gladdenbegk would serve 20.4% more area and 14.1% more population than would be served by Lutz. The following are the distances to the respective 1 mv/m contours from Shell Lake:

	Lutz (miles)	Gladdenbegk (miles)
North	12	12
Northeast	10	10.5
East	10	10.5
Southeast	12	13.5
South	15.5	18
Southwest	15.5	18.7
West	17.5	18.7
Northwest	14.7	15

10. The entire areas within both proposed 1 mv/m contours are now served by only FM station, WJMC–FM, Rice Lake, Wisconsin. AM station WCSW, Shell Lake, also serves 100% of both proposed service areas daytime. WCCO, Minneapolis, provides AM service both day and night to all of the proposed FM service areas of both applicants. Thus, either proposal would bring a fourth daytime and third nighttime aural service to their service populations.

THE APPLICANTS

Erwin Gladdenbegk

11. Mr. Gladdenbegk was born in Chicago, Illinois, and graduated from DeForest Electronics Trade School in that city in 1940. He was employed by Zenith Radio Corporation until 1949 when he received an FCC first-class license and joined WLS, Chicago, as transmitter engineer. In 1951 he moved to the Shell Lake area and opened a TV sales and service store in that city. In August 1970 he moved to Shell Lake proper.

12. Mr. Gladdenbegk owned and operated a television sales and service store in Shell Lake from 1951–1959. In 1962 he constructed a CATV system in Shell Lake which he still owns and operates as a sole proprietorship. From 1968 to 1970, he was manager and 50% owner of Station WCSW in Shell Lake, Wisconsin. For many years, Mr. Gladdenbegk has been associated with Shell Lake civic organizations,

such as the Masons, Chamber of Commerce, Methodist Church, Lions, Shell Lake Development Corporation and Shell Lake Cemetery.

13. Mr. Gladdenbegk's CATV system has approximately 200 subscribers, all in Shell Lake. This system brings into the area television programs of stations in Minneapolis, Eau Claire and Duluth. He does not now, nor does he, propose to originate any programs over the system. In the event his subject application is granted, Mr. Gladdenbegk intends to manage the FM station on a full-time basis and has made arrangements for someone else to take over the management and operation of the CATV system.

Charles R. Lutz

14. Mr. Lutz is a lifelong resident of the city of Shell Lake. He has served on both the Shell Lake City Council and the Washburn County Board of Supervisors, and has been a candidate for the Wisconsin State Assembly. In addition, he has served as chairman of the Washburn County Red Cross, and is an active member of the Shell Lake Volunteer Fire Department and of the Shell Lake and Cumberland Chambers of Commerce. He is also a member and past officer of American Legion Post 225, Shell Lake, and a member of the local Disabled American Veterans Organization. Lutz is also a member of the Brill Area Sportsman's Club and a past member of the Elks Club and of the Shell Lake Industrial Development Committee. He has been associated with several business enterprises in Shell Lake, including Northern Credit Finance Corporation, Thorp Finance Corporation and Lutz Sales and Service, a local automobile dealership.

15. From December 1, 1968 until the present, Lutz has owned and operated WCSW-AM in Shell Lake. From December 1, 1968 until April 1970, Messrs. Lutz and Gladdenbegk were partners in the ownership of WCSW. Since April 1970, Lutz has been the sole owner of the station. The studios and offices of WCSW are located in Lutz' home, where he will also locate the studios and offices of his proposed FM station. Lutz is presently the full-time manager of WCSW.

Issue 1—Suburban Issue—Gladdenbegk

16. With respect to this issue, the designation order stated:

"In ***Suburban Broadcasters***, 30 FCC 951 (1961), our Public Notice of August 22, 1968, FCC 68-847, 13 RR 2d 1903. *City of Camden (WCAM)*, 18 FCC 2d 412 (1969), and our ***Primer on Ascertainment of Community Problems by Broadcast Applicants***, FCC 71-176, released February 23, 1971, we indicated that applicants were expected to provide full information on their awareness of and responsiveness to local community needs and interests. In this case, neither applicant has shown that it has contacted a representative cross-section of the area nor has Gladdenbegk adequately provided the comments regarding community problems obtained from such contacts. In part, Lutz has provided satisfactory comments. Neither has adequately provided a listing of specific programs responsive to specific community needs as evaluated. As a result, we are unable at this time to determine whether either of the applicants is aware of and responsive to the needs of the area. Accordingly, ***Suburban*** issues are required."

17. After receipt of the above order, Mr. Gladdenbegk conducted a further survey of the coverage area on May 5, 6 and 7, 1971. In the community of Shell Lake, he personally interviewed the following

community leaders and submitted comments regarding community problems that were obtained from such interviews:

Mr. Cyrus Atkinson, Mayor
Mr. Nolan Penning, President of City Council
Mr. John McNabb, past commander, American Legion; past president, Chamber of Commerce.
Mr. Wilson H. McLean, head of job training programs
Mr. Darrell Aderman, high school music teacher; head of Indianhead Arts Center
Mr. Charles H. Lewis, president of Board of Education; president, Wisconsin School Board Association
Mr. Joseph Rounce, member of Washburn County Board; manager of Allen Gas & Oil Co.
Mr. Delbert Soholt, director of Lions Club; hardware store owner
Mrs. Anna Bohn, president of American Legion Auxiliary #225
Mr. William Albright, director of community action program; also resort owner
Mr. Ray Bennett, park supervisor
Mr. Dudley Livington, commander of American Legion Post #225
Mr. Leo Remelard, night club owner, Aero Club member
Mrs. Charles H. Lewis, president, Wisconsin Federation of Women's Clubs, 10th District
Mr. Roland Erickson, high school guidance counselor and manager of housing authority
Mr. Donn Dinnics, secretary of Shell Lake Development Corporation
Mr. Robert Walner, manager, Farmer's Union Co-op
Mr. Richard Rydberg, president of Chamber of Commerce; insurance representative
Mr. John Hoar, retired school superintendent
Mr. Dave Pieper, treasurer, Democratic Party of Washburn County
Mr. Warren Winton, Washburn County Judge
Mr. John Bakker, postmaster
Father Paul Boshold, Catholic Church
Mr. Harold Bennewitz, president of National Farmers Organization, Washburn County

18. In the aforementioned survey, Mr. Gladdenbegk also interviewed the following members of the general public in Shell Lake and received comments and suggestions from them:

Mr. Robert Rezarch, owner of Shell Lake Feed Mill
Miss Alda Johnson, private citizen, 77 years old
Mr. Lloyd Bohn, commander, W.W.1 Barracks 3499
Mr. Glen Peterson, post office employee
Mr. Ernie Swanson, farmer
Mr. Hubert Smith, superintendent of schools
Mr. Mark Bruce, student
Mrs. Donald Bruce, housewife, mother of four children

Mr. Howard Nebel, hotel owner
Mr. Ralph Van Meter, police officer
Mr. Victor S. Anderson, farmer

19. Mr. Gladdenbegk also personally interviewed community leaders in the following outlying communities during the May 1971 survey:

In Spooner:

Mrs. Marshall Peterson, secretary of 10th Congressional District of the Republican Party
Mr. Sheldon Kliman, member of the board of directors of the National Theater Owners Association
Mr. Maurice Costello, past president of the Spooner Chamber of Commerce
Mr. Kenneth Schricker, head of Washburn County Welfare Services
Mr. Hugh Schlief, post office employee
Mrs. Woodrow Brown, president of the Washburn County 4-H Club
Mr. James Johnson, Washburn County Youth Agent
Father John E. Amberling, pastor, Episcopal Church

In Cumberland:

Mr. Lloyd Wikre, real estate company
Mr. Louis DeGidio, director, Cumberland Chamber of Commerce and member of City Council and Kiwanis Club
Mr. Ken Barrows, director, Chamber of Commerce, and City Council member
Mr. Charles Cristianson, alderman, City Council; past director, Chamber of Commerce
Mr. John Haley, secretary, Chamber of Commerce
Mr. Phil Mayor, department store owner; past president, Chamber of Commerce

In Sarona:

Mr. Roy Humilcek, treasurer of Washburn County
Mrs. W. F. Sauer, deputy treasurer of Washburn County

In the listing of Shell Lake community leaders, it is noted that Mr. Robert Walner, manager of the Farmer's Co-op, covers Spooner and Sarona, as well as Shell Lake.

20. In the case of all the foregoing interviews, Mr. Gladdenbegk questioned each as to what the needs and interests of the community were and how an FM station in the area could help solve the problems. A summary of the problems and needs elicited shows the following:

Lake pollution.
Better relations between city and county law enforcement officers.
Need for more small industry.
Better communication with the public.
Need of the Indian community for more jobs for the less educated.
Job training for low income groups and youth.

Publicity needed for poverty level programs.
Recreational area for young people.
Ecology.
More housing.
Better relations between school board, teachers and public, more publicity of high school activities and coverage of local events at night.
Drugs.
Vandalism.
Juvenile delinquency.
More information on the laws of the city and county.
Enforcement of local laws.
Unemployment.
Weather, news, especially at night.

21. In order to satisfy the needs found in his survey, Mr. Gladdenbegk proposes the following programs:

a. *What's your opinion?* A daily 15-minute talk and interview program aired at noon with a repeat at 6:00 p.m. Listeners can provide questions either by letter or by telephone. Various community leaders will be interviewed on the program to discuss such problems as lake pollution, police-sheriff relations and drug abuse among teen-agers.

b. *Weather roundup.* Four times daily, 7:00 a.m., 12:15 p.m., 6:15 p.m. and 10:00 p.m. He will use the best source available to teletype, Weather Bureau at Duluth, La Crosse and Madison, plus county sheriff's radio contacts to follow storm patterns locally. Bulletins will be given whenever needed.

c. *For your information.* Five-minute talk show given by law enforcement people and other groups interested to inform the public on what our community laws are in regard to drug abuse, traffic laws, city ordinances, state laws, etc. Program is aired three times a day, morning, noon and evening. Some repeats of the same shows will be given, if needed.

d. *Live stock markets.* From teletype, South St. Paul and local prices would be aired from 7:00–7:30 a.m., noon and 6:00–6:30 p.m.

e. *Your schools report.* Saturday, 12:30–1:00 p.m., repeated at 6:30 p.m. A program designed to meet the needs of communications between school administrators, school board members, teachers, students and the general public.

In addition he proposes to devote 11 hours, 50 minutes to news during a typical week of 126 hours (9.5%). Mr. Gladdenbegk also proposes to present local high school sports and activities on an as-needed basis.

Issue 2—Suburban Issue—Lutz

22. After receipt of the Commissioner's order of designation with the statement set forth in paragraph 16, *supra*, Mr. Lutz conducted another survey of persons in the service area. He interviewed community leaders and the general public, but concentrated his efforts mostly in the rural areas, which comprise about 62% of the population within the service area.

23. Among the civic leaders that were interviewed in the area are the following:

Mr. Milo Schieffer, Chairman of Oak Grove Township, Barron County
Mr. Ed Jeffery, Supervisor and Town Chairman, Clam Falls, Loraine

Mr. Jess Okerlund, Town Chairman, Sand Lake
Mr. Bob Meronk, Supervisor and Town Chairman, Town of Scott, Burnett County
Mr. Joe Pepouski, Chairman, Maple Plaine, Barron County
Mr. Harold Stromberg, Supervisor of Sarona Township
Mr. Ernest Norton, Clerk, Beaver Brook Township
Mr. Ronald Minkel, Chairman, Bear Lake
Mr. Ray Givings, Supervisor of Chicog, Brooklyn and Casey Townships
Mrs. Gladys Bearhart, Maple Plaine Township, wife of Indian Chief
Mr. Marvin Coleman, retired president, Oil, Chemical and Atomic Workers International Union
Mrs. Marvin Coleman, vice president, Local Minnesota Mining Union
Mr. William Schreiber, Chairman, Evergreen Township; president of Spooner Creamery Board
Mr. Otto S. Keuhn, Town Chairman and Supervisor, Roosevelt Township
Father Paul Boshold, Priest, Shell Lake Catholic Church
Mr. George Burford, Mayor, Village of Webster
Mr. Harold Frogg, Alcoholic Counselor for Indians
Violet West, President of Haugen Village
Mr. Sam Bearhart, member of Tribal Council
Mr. Winston Christner, Chairman of Rusk Township, Burnett County

24. In addition to the foregoing civic leaders, Mr. Lutz interviewed over one hundred members of the general public, including thirteen from Shell Lake itself, and received comments on the problems and needs of the service area.

25. From his interviews, Lutz has indicated a number of the needs and interests of the area, and his evaluation thereof, as follows:

Weather and the condition of the roads, especially in the case of many elderly people who reside on small farms; during the winter months there would be the necessity of warning them or getting them out in case of illness or accident.
Zoning.
Alcoholism.
Drugs.
Recreational projects for children and young people.
More parks.
Center for community gatherings.
Lack of industry.
Housing.
Employment of youth.
Taxes too high for people on fixed incomes.
Tax relief for low income families.
Taxes too high for sizes of towns.
Pollution.

Excessive dumping of waste on township dumps.
Roads need improvement.
Stricter law enforcement.
Improved telephone communications.

26. Lutz proposes to simulcast the programs of daytime Station WCSW and the proposed FM station. The programming to be simulcast would extend from the time the AM and the FM stations sign on at 6:00 a.m. until the AM sign off, which varies from month to month. The FM would sign off at midnight. On this basis, about 71% of the FM station's programming would be simulcast over WCSW.

27. To satisfy the needs of the area that were found in his surveys, Mr. Lutz proposes the following programs:

a. *Editorial comment*—A telephone call-in program Monday–Saturday inclusive, from 9:00 to 9:55 a.m.

b. A weekly taped program (day of week would vary) from 6:35 to 6:40 a.m. This would consist of talks by the zoning administrators of Washburn and adjoining counties.

c. *Meet your government*—Sunday, 2:00–2:30 p.m. Once a month this program would take up the problems of zoning and include tapes or live talks by zoning administrators, town chairmen and supervisors, and other people interested. On other Sundays this program would present information on Indian language and traditions and discuss Indian housing. On other occasions, it would consist of interviews with leading citizens and officials of Burnett as to the possibility of new industries.

d. *The zoning problem*—Proposed to be broadcast once a month on a weekday between 8:00 and 8:30 p.m. This would be a taped replay of one of the "Meet Your Government" programs referred to above.

e. A program of Indian music monthly on Sunday from 8:00 to 9:00 p.m.

f. A program for youth employment and recreational areas and facilities. It is proposed to broadcast this program from 10:00 to 10:30 a.m. on Saturday. It would consist of taped interviews with some of the youth leaders in Burnett County and also in the area of Haugen. On occasion there would be programs for the Indianhead Arts Center activities consisting of such matters as broadcast of musical events, a talk by one of the athletes and broadcast by artists assisting the students who might be attending classes.

In addition to the above programs, Mr. Lutz proposes hourly weather reports with frequent weather reports in the early morning and during the noon hour. News and sports would be broadcast several times a day, and local news would be incorporated in the ten-minute weather and news program, from 8:35 to 8:45 a.m. After the AM sign off, Lutz would continue to give weather, news and sports on a schedule similar to the above until 12:00 midnight.

Issue 3—Comparative Issue

28. Since findings encompassing this issue have been made hereinbefore, it is not deemed necessary to repeat them at this point in the decision.

ULTIMATE FINDINGS AND CONCLUSIONS

1. Authority to use FM Channel 237A (95.3 MHz) at Shell Lake, Wisconsin, is sought by two applicants, Erwin Gladdenbegk and Charles R. Lutz each proposes 3 kw ERP, the former at 300 ft. HAAT and the latter at 265 ft. HAAT.

2. Shell Lake has a population of 928 and is the county seat of Washburn County (population 10,601). It is situated in the northwestern part of the state and is about 70 miles south of Superior, Wisconsin. There are only two other communities of any substantial size inside the proposed 1 mv/m contour of either station, viz: Spooner (population 2,444) and Cumberland (population 1,839).

Issues 1 and 2—Suburban

3. The findings hereinbefore show that each applicant has defined the area to be served, and has conducted adequate surveys of such area. In these surveys, each has interviewed an adequate cross section of the community leaders and the public to ascertain the problems and needs that exist. The surveys were made by the principal of each applicant or under his direct supervision. Demographic information has been submitted showing that a cross section of the community leaders have been contacted. The community problems found have been listed and the various individuals contacted have been identified by name, position and organization. Each applicant has submitted his evaluation of the needs and problems that were discovered during the surveys he conducted, and proposed programming that will deal with these needs. The title, time, duration and frequency of broadcast and descriptions of those programs have been given in the findings. A comparison of the evidential showing of each applicant with the requirements of the *Primer* leads to the conclusion that each has adequately met the burden under the *Suburban* issue designated against him.

Issue 3—Comparative

4. In the area of integration of ownership and management, neither applicant is entitled to a preference over the other. Each owns 100% of his application and each will devote full time to the management of the proposed station.

5. With respect to the criterion of diversification of the media of mass communications, the findings show that Mr. Gladdenbegk owns a CATV system in Shell Lake that has about 200 subscribers. Mr. Lutz is the sole owner of radio broadcast station WCSW, a daytime only operation in Shell Lake, that serves approximately the same area proposed to be served by the FM station. It further appears that Mr. Lutz proposes to simulcast the programming of WCSW and the proposed FM station during the AM station's operation. Thus a grant of the Gladdenbegk application would bring Shell Lake and the surrounding area a new and different daytime service. A grant of the Lutz application would give him the only two radio facilities in Shell Lake, daytime, with the same programming on both stations. In view of the foregoing it is concluded that the Gladdenbegk application is entitled to some preference in the major criterion of diversification.

6. Insofar as the factor of local residence is concerned, the findings reveal that Mr. Gladdenbegk has been a resident of the Shell Lake area for over 20 years and a resident of Shell Lake proper since August 1970. Mr. Lutz has been a virtual lifelong resident of Shell Lake. Each applicant has resided in the area a sufficient length of time to become conversant with its problems in a general way. Since area familiarity

does not, per se, entitle an applicant to a preference, it is concluded that neither applicant is entitled to a preference over the other in the realm of local residence.

7. Under the terms of the designation order, comparative consideration is to be given to the areas and populations which each applicant would serve with his 1 mv/m contour. According to the findings, the Gladdenbegk application would serve 1,911 more persons in an area of 121 square miles located south and west of Shell Lake than would the Lutz application. All of both service areas is served by FM Station WJMC–FM, Rice Lake, Wisconsin; full time AM Station WCCO, Minneapolis, Minnesota; and AM Station WCSW, Shell Lake, which operates daytime only. Thus, either proposal would provide a first FM outlet day and night to Shell Lake, as well as a second aural outlet daytime and a first aural outlet nighttime to the community. Either proposal would provide a second FM service day and night, and a fourth aural service daytime and a third aural service nighttime to the proposed service area. On the basis of the Gladdenbegk application providing service to 1,911 more persons in the area than would the Lutz application, Gladdenbegk is entitled to a preference in this category.

8. In summary, each applicant has met his burden on the *Suburban* issue, and, thus, each is qualified to construct and operate his FM station as proposed. On a comparative basis, neither applicant is entitled to a preference over the other with respect to the criterion of integration, or in the area of local residence. In the criterion of diversification, Mr. Gladdenbegk has been awarded a slight preference. Also, he has been awarded a preference over Mr. Lutz for providing service to more persons and areas within his 1 mv/m contour.

9. Upon the basis of the foregoing findings and conclusions, and the entire record in this proceding, it is concluded that the public interest, convenience and necessity would be served by a grant of the Gladdenbegk application and a denial of the Lutz application.

Accordingly, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by any of the parties or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the application of Erwin Gladdenbegk for a construction permit for a new FM station to operate on Channel 237, 95.3 MHz, at Shell Lake, Wisconsin, IS GRANTED, and the application of Charles R. Lutz for the same facility IS DENIED.

MILLARD F. FRENCH,
Hearing Examiner,
Federal Communications Commission.

F.C.C. 73-183

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF GROSSCO, INC., LICENSEE OF STATION WEXT, WEST HARTFORD, CONN.
For a Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 20, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT; COMMISSIONER WILEY CONCURRING IN THE RESULT.

1. Now under consideration are: (a) our letter of July 26, 1972, notifying Grossco, Inc. (Grossco), licensee of Station WEXT, West Hartford, Connecticut, of its apparent liability for a forfeiture of $4,000; and (b) Grossco's response to that letter, filed August 21, 1972, as supplemented by a letter dated November 20, 1972.[1]

2. The Notice of Apparent Liability cited four instances where Grossco apparently violated Section 73.112(a)(2)(i) of our Rules. In light of Grossco's response it appears that this rule has not been violated. Grossco states that two of the four commercials cited as not logged but broadcast were network commercials not required to be logged by the station, and that the other two commercials were broadcast during a different quarter-hour segment of the hour than the segment in which they were logged.

3. Based on a comparison of the station's logs and recordings of the station on four separate days, Grossco was found to have apparently violated Section 73.112(a)(2)(ii) in that it was inaccurately logging the duration of commercials.[2] The specific details were set out in the Notice. However, so that the substantial degree of error in Grossco's logs can be fully understood, we have set out the details of one of the monitored periods in the attached Appendix. A summary of the information for all four days shows the following:

[1] The supplemental material was provided in response to a staff letter asking for clarification of certain matters.

[2] Grossco did not elect to show in its logs the total duration of commercial matter in each hourly segment. Instead, it elected to log the duration of each commercial as is permitted under Section 73.112(a)(2)(ii). It is essential, therefore, that each commercial be accurately logged.

Date	Time of broadcast	Actual commercial duration (minutes: seconds)	Logged commercial duration (minutes: seconds)	Difference (minutes: seconds)
Jan. 20, 1972	3:45 to 4:45 p.m.	24:46	20:40	4:06
Jan. 21, 1972	7:15 to 8:45 a.m.	35:07	30:20	4:47
Mar. 7, 1972	4:33 to 5:58 p.m.	23:27	17:40	5:47
Mar. 8, 1972	6:67 to 7:57 p.m.	18:02	16:00	2:02
Totals	4 hours, 55 minutes	101:22	84:40	16:42

Thus, while the station was monitored, the total actual duration of commercials exceeded the total logged duration by 19.8 per cent. Moreover, of the 98 commercials broadcast during the monitored periods, 58 (59.2 per cent) were logged inaccurately as to their duration.[3]

4. In its response, Grossco concedes that the rule was violated, but states that the inaccurate logging was the result of "minor" staff operational error; that subsequent to our investigation of the station, a strict policy was put into effect to prevent this type of error; that this strict policy has resulted in exemplary operations, especially in the logging of commercials; and that no harm ever resulted to an advertiser or to the public interest. Unlike Grossco, we do not consider the violations to be "minor." The purpose of our program logging rules is, among other things, to make available to us specific information on programs broadcast, the types of such programs, and the duration of the advertising messages. To the extent to which the programming logs are falsified or substantially inaccurate, therefore, the integrity of our regulatory process is threatened. Furthermore, logging violations such as those here indicate lack of adequate supervision and control of the licensee over the operation of its station. The assertion that the logging violations resulted from staff errors does not exculpate Grossco, since it is responsible for the acts of its employees, *Eleven Ten Broadcasting Corporation*, 32 FCC 2d 706 (1962). When violations of rules are brought to the licensee's attention, corrective action is expected. However, past violations are not excused by subsequent corrective action, *Executive Broadcasting Corp.*, 3 FCC 2d 699 (1966). In sum, Grossco's response provides no reason to reduce the forfeiture as to the substantially inaccurate logging of the duration of commercials.

5. The Notice also found apparent violations of Section 73.119 of our Rules and Section 317 of the Communications Act for failure to give the required sponsor identification of 18 commercials. In view of Grossco's response, it appears that appropriate sponsor identification was given as to 4 of the 18 instances cited in the Notice.[4] There remains for consideration the 14 commercials promoting a concert by Jerry Lee Lewis that were paid for by Country Music Productions.

[3] In view of Grossco's response, minor downward adjustments have been made in the figures set out in this paragraph, compared to the figures set out in the Notice of Apparent Liability.

[4] The four commercials referred to are three commercials purchased by Rodco and one purchased by Muntz TV.

At the end of the commercial, a statement was made that tickets for the concert could be purchased at the Belmont Record Shop. In its response, Grossco states that Country Music Productions and Belmont Record Shop are commonly controlled corporations doing business from the same location and having the same employees. Grossco apparently takes the position that the mention of one corporation is sufficient sponsor identification for commercials purchased by the other. We disagree. Although the two corporations may be commonly controlled, they are separate legal entities and sponsor identification cannot be used interchangeably. Moreover, the statement that tickets can be purchased at Belmont Record Shop would be an insufficient identification for a commercial purchased by that company. Such a statement does not "fully and fairly disclose" [Section 73.119(e)] the sponsor because there is no necessary correlation between a ticket agent and the sponsor of the event advertised. Advertisements for concerts often state that tickets may be bought at many stores which are not producers of the concerts or sponsors of the advertisements.

6. Grossco contends that the violations were not willful and generally asserts that the amount of the forfeiture is excessive. Since we find that the violations are repeated, we need not reach the question as to whether they were willful, *Paul A. Stewart*, FCC 63–411, 25 RR 375 (1963). In determining the amount of a forfeiture we consider several factors, including the number, seriousness and duration of the violations, and the financial condition of the licensee. Here the licensee has furnished no evidence to establish that the most serious violations cited in our Notice did not occur. However, in view of the fact that it claims that the cited violations of Section 73.112(a)(2)(i) did not occur, and has furnished evidence that 4 of the 18 commercials cited as lacking correct sponsorship identification were correctly identified, we have determined to reduce the amount of the forfeiture from $4,000 to $3,000.

7. Accordingly, IT IS ORDERED, That Grossco, Inc., licensee of Station WEXT, West Hartford, Connecticut, FORFEIT to the United States the sum of three thousand dollars ($3,000) for repeated violations of Sections 73.112(a)(2)(ii) and 73.119 of the Commission's Rules and Section 317 of the Communications Act of 1934, as amended. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Treasurer of the United States. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules, an application for mitigation or remission of forfeiture may be filed within thirty (30) days of the date of receipt of this Memorandum Opinion and Order.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of the Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to Grossco, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

JANUARY 21, 1972

Time (a.m.)	Commercial	Actual duration	Logged duration
7:15	D-Con	60	60
	E. P. Hayes	1:22	60
	Brodie Mountain	46	30
	Carbone Auto Body	45	60
	Country Music Productions	1:23	60
7:30	Backus Motors	1:10	60
	Fred Locke Stereo	55	60
	Rodco	57	60
	Empire Pizza	1:20	60
	Country Music Productions	1:10	60
7:45	Gelcotoy	2:30	2:30
	Cookes Tavern	1:14	60
	Fred Locke Stereo	05	10
	Sam's Mobile	37	60
	N.E. Tractor	1:25	10
	Country Music Productions	60	60
8:00	Pennzoil	60	60
	Barrieau Moving	1:12	90
	Brodie Mountain	47	30
	Country Music Productions	1:08	60
8:15	Arthur Drug	30	30
	Jordan & Sumera Tire	1:07	30
	Carbone Power Equipment	60	60
	Lipton Tea	60	60
	N.E. Tractor	1:42	10
	Country Music Productions	1:14	60
8:30	E. P. Hayes	1:23	60
	Monaco & Sons	1:08	1:30
	Georgetown	60	60
	Carbone Auto Body	47	30
	Westinghouse Securities	60	60
8:45	Shannons Cafe	30	30
	Sears	60	60
	Total	35:07	30:20

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
ITT WORLD COMMUNICATIONS, INC., WASHINGTON, D.C.
For Inspection of Records Concerning the Interim Communications Satellite Committee 62d Meeting

JANUARY 31, 1973.

Mr. TERRENCE L. SLATER,
Washington Counsel, ITT World Communications, Inc., 1707 L Street NW., Washington, D.C.

DEAR MR. SLATER: This is in reply to your letter of January 5, 1973 requesting authorization to inspect and copy the "Summary Record of the 62nd Meeting of the ICSC held 13–20 December, 1972," and "all revelant correspondence between and among United States Government agencies, and between such agencies and COMSAT, relating to the 62nd Meeting." You also request that the entity submitting this material file its response within a shorter period of time than the usual fifteen days provided in Section 0.461(b) of the rules, and that the Commission postpone acting on the request of the Communications Satellite Corporation (Comsat) for approval of the INTELSAT IV 1/2 series until after you have had an opportunity to inspect and comment to the Commission on the requested material.

As your letter recognized, at the time you requested this material Commission action on the proposed INTELSAT IV 1/2 series was imminent, and it was necessary for the Commission to act on this program in order to permit time for coordination, among the various United States Government agencies, of the official United States position on the proposed satellite series to be presented to the Interim Communications Satellite Committee (ICSC) at its next meeting which commenced January 24, 1973. It should also be noted that the requested material is not the exclusive concern of this agency, that several agencies have an interest in determining whether it should be made available, and that the response of Comsat to your request was not sent until January 17, 1973.

I regret that the necessity for Commission action has made it impossible to comply with your request that the Commission delay further action on the proposed satellite series. If you are still interested in examining the material, however, I believe that it would be in the public interest to permit you to inspect and copy those parts of the Summary Record of the 62nd Meeting of the ICSC which directly relate to the Committee's discussion of and action on the United States Government's instructions to Comsat concerning the proposed INTELSAT IV–A program—paragraphs 21–23, 28–35, and 38–44. As

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indicated in your letter, Comsat briefed you and the other interested international carriers on this proposal some months ago and you have filed comments with the Commission in opposition to the program. It should also be noted that on January 11, 1973 the Commission received an application from Comsat for the necessary authorization to participate in a program for the construction of the satellites for the proposed INTELSAT IV–A program.

In view of the fact that the matters to be disclosed here involve primarily the instructions of the United States Government to Comsat and do not disclose confidential information of the other members, I do not believe ICSC would object to making its ordinarily confidential minutes available for your examination.[1]

It should be emphasized, however, that the record you request is a document prepared for internal use of the members of INTELSAT, an international group, and that permitting you to inspect portions of it should not be interpreted as making this document available for public inspection. In addition, all requests for this and any other private ICSC documents should be made and resolved on an *ad hoc* basis.

I also believe that, with the exception of two letters initiated by other government agencies, the second part of your request should be granted. One of the letters excepted is dated December 1, 1972 and constitutes a technical report by NASA to this agency concerning the proposal. Since their report includes proprietary and confidential information, NASA some time ago requested that it be given confidential treatment. The pertinent information therein, has however been included in a subsequent report dated December 12th and NASA has indicated no objection to disclosure of this summary. The other letter, dated December 11, 1972, from the Office of Telecommunications Policy to the Department of State involves two other agencies and, in accordance with the procedures specified in Section 0.461(c)(2) of the rules, we have referred it to OTP for response. Another letter dated December 14, 1972 from the Department of State to Comsat is being made available to you because the State Department has advised us that it has no objection to our making it available to you.

Accordingly, and subject to the requirements for review set out in Section 0.461(d)(2) of the rules, ITT World Communications Inc. is hereby authorized to inspect and copy paragraphs 21–23, 28–35, and 38–44 of the Summary Record of the ICSC adopted at the conclusion of its Sixty-Second Meeting. ITT World Communications Inc. is also authorized to inspect and copy all but two of the relevant letters between the United States Government agencies and between such agencies and Comsat which relate to the 62nd Meeting of the ICSC. Arrangements for inspection and copying should be made with the Office of the Executive Director.

Sincerely yours,

JOHN M. TORBET,
Executive Director.

[1] The summary minutes of the First Session of the ICSC, held on October 1, 1964, provide that the Committee's official documents should not be made available for public release and that all discrimination of Committee records and documents should be made through the Secretarist of the Committee.

F.C.C. 73-138

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CHARLES W. JOBBINS, COSTA MESA-NEWPORT BEACH, CALIF.	Docket No. 15752 File No. BP-16157
GOODSON-TODMAN BROADCASTING, INC., PASADENA, CALIF.	Docket No. 15754 File No. BP-16159
ORANGE RADIO, INC., FULLERTON, CALIF.	Docket No. 15755 File No. BP-16160
PACIFIC FINE MUSIC, INC., WHITTIER, CALIF.	Docket No. 15756 File No. BP-16161
C. D. FUNK AND GEORGE A. BARON, A PARTNERSHIP D.B.A. TOPANGA MALIBU BROADCASTING CO., TOPANGA, CALIF.	Docket No. 15758 File No. BP-16164
ROBERT S. MORTON, ARTHUR HANISCH, MACDONALD CAREY, BEN F. SMITH, DONALD C. MCBAIN, ROBERT BRECKNER, LOUIS R. VINCENTI, ROBERT C. MARDIAN, JAMES B. BOYLE, ROBERT M. VAILLANCOURT AND EDWIN EARL, D.B.A. CROWN CITY BROADCASTING CO., PASADENA, CALIF.	Docket No. 15762 File No. BP-16168
VOICE IN PASADENA, INC., PASADENA, CALIF.	Docket No. 15764 File No. BP-16172
WESTERN BROADCASTING CORP., PASADENA, CALIF.	Docket No. 15765 File No. BP-16173
PASADENA BROADCASTING CO., PASADENA, CALIF.	Docket No. 15766 File No. BP-16174
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 15, 1973)

BY THE COMMISSION:

1. We have before us for consideration petitions for leave to amend their applications for construction permits filed May 24, 1971, and July 28, 1971, by Charles W. Jobbins and Western Broadcasting Corporation, respectively.[1]

2. Jobbins filed his petition for leave to amend in an attempt to bring his application for a construction permit into compliance with

[1] Also before us are: (1) a petition to reopen the record filed May 24, 1971, by Charles W. Jobbins; (2) comments on (1) filed June 2, 1971, by the Chief, Broadcast Bureau; (3) a reply to (2), filed June 14, 1971, by Jobbins; (4) a request to accept unauthorized reply *nunc pro tunc* filed June 21, 1971, by Jobbins; and (5) an opposition to Western's petition for leave to amend filed August 5, 1971 by Orange Radio, Inc.

the provisions of our *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). However, in light of the action we are taking in our associated Memorandum Opinion and Order, FCC 73–164 it would appear that this issue is mooted insofar as Jobbins is concerned. Therefore, Jobbins' petition for leave to amend will be dismissed as moot.

3. Western's proposed amendment reflects the divestiture by Richard A. Moore of his stock in Western (20%), and the transfer of that stock to a trust to be administered by Norman R. Tyre "for and on behalf of all of the existing shareholders of Western . . . (excluding . . . Richard A. Moore, who . . . is no longer a shareholder of the corporation) in accordance with their percentage ownership of the presently existing issued shares of the corporation." Upon consideration of Western's petition and Orange's opposition thereto, we have determined that a grant of Western's petition for leave to amend would not result in a comparative advantage to Western, nor would it work to the comparative disadvantage of any other applicant, and that good cause has been shown for the acceptance of the amendment. Also, on our own motion, we shall accept the petition for leave to amend filed by Western on May 10, 1971, and addressed to the Review Board, reflecting Moore's resignation as General Manager of Western, said petition being dismissed as moot by the Review Board without a ruling on the merits of said petition in light of the Board's disqualification of Western on technical grounds in its Decision, 29 FCC 2d 533 (1971).

4. Accordingly, IT IS ORDERED, That:

(a) the petition for leave to amend and petition to reopen the record filed May 24, 1971, and the request to accept unauthorized reply *nunc pro tunc* filed June 21, 1971, by Charles W. Jobbins ARE DISMISSED as moot;

(b) the petition for leave to amend filed July 28, 1971, by Western Broadcasting Corporation IS GRANTED; and

(c) the Review Board's Decision, 29 FCC 2d 533, released May 26, 1971, IS REVERSED, insofar as it dismisses the petition for leave to amend filed May 10, 1971, by Western Broadcasting Corporation, and said petition IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION.
BEN F. WAPLE, *Secretary.*

F.C.C. 73-164

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CHARLES W. JOBBINS, COSTA MESA-NEWPORT BEACH, CALIF.	Docket No. 15752 File No. BP-16157
GOODSON-TODMAN BROADCASTING, INC., PASADENA, CALIF.	Docket No. 15754 File No. BP-16159
ORANGE RADIO, INC., FULLERTON, CALIF.	Docket No. 15755 File No. BP-16160
PACIFIC FINE MUSIC, INC., WHITTIER, CALIF.	Docket No. 15756 File No. BP-16161
C. D. FUNK AND GEORGE A. BARON, A PARTNERSHIP D.B.A. TOPANGA MALIBU BROADCASTING CO., TOPANGA, CALIF.	Docket No. 15758 File No. BP-16164
ROBERT S. MORTON, ARTHUR HANISCH, MACDONALD CAREY, BEN F. SMITH, DONALD C. MCBAIN, ROBERT BRECKNER, LOUIS R. VINCENTI, ROBERT C. MARDIAN, JAMES B. BOYLE, ROBERT M. VAILLAINCOURT AND EDWIN EARL, D.B.A. CROWN CITY BROADCASTING CO., PASADENA, CALIF.	Docket No. 15762 File No. BP-16168
VOICE IN PASADENA, INC., PASADENA, CALIF.	Docket No. 15764 File No. BP-16172
WESTERN BROADCASTING CORP., PASADENA, CALIF.	Docket No. 15765 File No. BP-16173
PASADENA BROADCASTING CO., PASADENA, CALIF.	Docket No. 15766 File No. BP-16174
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 13, 1973; Released February 15, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS DISSENTING; COMMISSIONER H. REX LEE CONCURRING AND ISSUING A STATEMENT.

1. The Commission has before it certain Applications for Review and related pleadings,[1] filed by the parties in the above-captioned pro-

[1] The pertinent pleadings before the Commission are as follows: (1) Applications for Review of Review Board Decision, 29 FCC 2d 533, FCC 71R-161, released May 26, 1971, filed September 23, 1971, by (a) Charles W. Jobbins, (b) Goodson-Todman Broadcasting, Inc., (c) Topanga Malibu Broadcasting Co., (d) Pacific Fine Music, Inc., (e) Crown City Broadcasting Co., (f) Voice in Pasadena, Inc., (g) Western Broadcasting Corp., and (h) Pasadena Broadcasting Co.; (2) Opposition to item (1) filed October 28, 1971, by Orange Radio, Inc.; (3) Comments on item (1) filed October 28, 1971, by the Broadcast Bureau; (4) Reply to items (2) and (3) filed November 5, 1971, by Goodson-Todman Broadcasting, Inc.; and (5) Reply to item (3) filed November 12, 1971, by Orange Radio, Inc.
Since the filing of its Application for Review, California Regional Broadcasting petitioned the Commission for dismissal of its application from the proceeding, which petition was granted by Commission Order of October 3, 1972 (FCC 72-847). That application is therefore no longer being considered in this proceeding.

ceeding, said Applications requesting review of the Decision issued by the Review Board on May 26, 1971, 29 FCC 2d 533.

2. This proceeding involves several applicants seeking a license for a new operation to replace Station KRLA on the 1110 kHz frequency in the Southern California area. At present, there are nine remaining applicants competing for the use of this frequency. In his Initial Decision, the Hearing Examiner (as he was then titled) proposed granting the application of Voice In Pasadena, Inc. The Review Board, upon review, reversed the Examiner and disqualified all of the applicants with the exception of Orange Radio, Inc. of Fullerton, California. However, due to serious public interest questions that had been raised concerning Orange's character qualifications, the Review Board severed the application of Orange Radio from this consolidated proceeding and remanded it to the Examiner for a further hearing on five additional issues. The remand order was contained in a Memorandum Opinion and Order (29 FCC 2d 849)[2] released concurrently with the Decision, which Decision is the subject of the instant applications for review.

3. The Applications for Review filed by Jobbins and Topanga Malibu will be denied.

4. The Commission has also considered the Applications for Review filed by the remaining six applicants, the Comments on Applications for Review filed by the Broadcast Bureau and the pleadings filed herein by Orange Radio. We are of the opinion that a sufficient threshold showing has been made by the said applicants and the Broadcast Bureau to warrant review by the Commission of the findings and conclusions of the above-mentioned Review Board Decision.

5. Oral argument is being authorized herein so that the six parties whose Applications for Review have been granted, Orange, and the Broadcast Bureau may present their views on the numerous and complex questions presented herein. The Commission requests, however, that the parties include in their oral presentation a discussion of the following questions:

A. Whether the Review Board's "theory of the case" is valid for a disposition of this case, or whether findings and conclusions must be made on additional or all of the issues specified in the designation order.

B. Whether the Review Board committed prejudicial error in taking official notice, in the manner it did, of material regarding the technical operation of Oak Knoll Broadcasting and its predecessor, Eleven Ten Broadcasting, and whether the record is sufficient without the use of such material to make findings and conclusions on the dispositive issues.

6. Accordingly, and in the premises, IT IS ORDERED, That

(a) The above described Applications for Review of Charles W. Jobbins and Topanga Malibu Broadcasting Co. ARE DENIED; and

(b) The Applications for Review filed by Goodson-Todman Broadcasting, Inc., Pacific Fine Music, Inc., Crown City Broadcasting Co., Voice in Pasadena, Inc., Western Broadcasting Corporation and Pasadena Broadcasting Company ARE GRANTED.

7. IT IS FURTHER ORDERED, That Oral Argument shall be held before the Commission *en banc* commencing at 9:00 a.m. on the

[2] A limited aspect of the Board's action on this matter was upheld by the Commission in its Memorandum Opinion and Order released March 3, 1972, FCC 72-204, 33 FCC 2d 821.

19th day of March, 1973 and concluding on the 20th day of March, 1973 at the Commission's offices in Washington, D.C.; that each party shall be accorded a maximum of forty-five (45) minutes to present its arguments; that no party shall be permitted to reserve time for rebuttal; that the authorization to each of the aforementioned parties to present oral argument is subject to the filing of a written notice of intention to appear and participate within five (5) days after the release of this Order; and that oral argument shall be presented on the following dates and in the following order:

(a) March 19, 1973:
Goodson-Todman Broadcasting, Inc.
Pacific Fine Music, Inc.
Crown City Broadcasting Co.
Voice in Pasadena, Inc.
(b) March 20, 1973:
Western Broadcasting Corporation
Pasadena Broadcasting Company
Orange Radio, Inc.
Broadcast Bureau

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

(In Re Oral Argument in the *Charles W. Jobbins* AM Proceeding—Docket Nos. 15752, *Et Al.*)

CONCURRING STATEMENT OF COMMISSIONER H. REX LEE

I concur in the Commission's decision to schedule oral argument in this very protracted comparative proceeding. It seems to me that the Review Board's "theory of the case"—that Section 307(b) allocation principles are controlling here and that the decision must be based on the most efficient and effective use of the 1110 KHz frequency by recognizing United States interests in retention of this existing high-power assignment and by assuring protection to the dominant clear channel station (KFAB, Omaha, Nebraska)—should be reviewed by the Commission since it represents a novel approach to the disposition of this case and since it effectively moots some of the hearing issues, including the *Suburban Community* issue. I would have preferred to accord the opportunity to participate in further proceedings to the low-power applicants (Charles W. Jobbins and Topanga Malibu Broadcasting Company) as well since they also have found fault with the Board's "theory of the case" and have argued that the Board committed reversible error in disqualifying them on efficiency grounds without consideration of the relative needs of the various communities for a transmission service. The basic questions raised by the Board's decision permeate all pending appeals, and it only seems fair to permit all applicants an opportunity to be heard by the full Commission, especially in a case that involves the application of basic allocation principles under Section 307(b) of the Act.

F.C.C. 73-146

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Applications of	
KING VIDEOCABLE CO., ELLENSBURG, WASH.	CAC-204 WA102
KING VIDEOCABLE CO., TOWN OF KITTITAS, WASH.	CAC-205 WA172
KING VIDEOCABLE CO., KITTITAS COUNTY, WASH.	CAC-206 WA175
For Certificates of Compliance Pursuant to Part 76, Subpart B, of the Commission's Rules	

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. King Videocable Company, operator of cable television systems at Ellensburg, the Town of Kittitas, and Kittitas County, Washington, all located within the Yakima, Washington smaller television market, has filed applications for certificates of compliance, pursuant to Section 76.13(c) of the Commission's Rules, seeking to add the "independent" signal of Canadian Station CHEK-TV (CBC), Victoria, British Columbia. King presently carries the following television broadcast signals:

KNDO, Channel 23, NBC, Yakima, Washington
KAPP, Channel 35, ABC, Yakima, Washington
KIMA-TV, Channel 29, CBS, Yakima, Washington
KYVE-TV, Channel 47, Educ., Yakima, Washington
KOMO-TV, Channel 4, ABC, Seattle, Washington
KING-TV, Channel 5, NBC, Seattle, Washington
KIRO-TV, Channel 7, CBS, Seattle, Washington
KCTS-TV, Channel 9, Educ., Seattle Washington
K79BY, Channel 79, Translator of KYQ-TV, Spokane, Washington

The proposed carriage of CHEK-TV is alleged to be consistent with Section 76.59(b) of the Rules, which provides that a cable system in a smaller television market may import sufficient television signals to meet a carriage compliment of three network stations and one independent station. Oppositions to these applications have been filed by the three Yakima network affiliates: Cascade Broadcasting Company,

licensee of Station KIMA–TV; Apple Valley Broadcasting, Inc., licensee of Television Broadcast Station KAPP; and Columbia Empire Broadcasting Corporation, licensee of Television Broadcast Station KNDO; and King has replied.

2. In the *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 141, we adopted Section 76.5(n) of the Rules, which defines an independent station as one ". . . that generally carries in prime time not more than ten (10) hours of programming per week offered by the three major national television networks." The Yakima stations assert that CHEK–TV presently broadcasts during prime time more than 10 hours of U.S. network programming, and therefore is not an independent station within the contemplation of the Rules. While not denying CHEK–TV's carriage of more than 10 hours of prime time U.S. network programming (the total amount is 20½ hours). King attributes much of it to the terms of CHEK–TV's affiliation contract with the Canadian Broadcasting Corporation, a Canadian television network, whereby it must carry all programming contracted for by CBC, regardless of its own inclinations. As a basic condition of its license under Canadian law, CHEK–TV must maintain an affiliation with CBC, and by virtue of this affiliation, it is presently required to carry 12½ hours of U.S. network programming contracted for by CBC. King argues that if these hours are eliminated, only 8 hours of prime time U.S. network programming are carried by CHEK–TV pursuant to arrangements that it controls. This argument assumes that a U.S. network program loses its identity as such because CBC has first contracted for it and then distributes the programming to its affiliates.

3. We are not persuaded by King's interpretation of Section 76.5 (n) of the Rules. That section focuses on the amount of U.S. network programming carried, not on the particular manner in which this carriage is effectuated. Section 76.5(n) does not distinguish between network programming contracted for by an individual station and programming that is carried pursuant to an affiliation contract, foreign or domestic. Nor does a U.S. network program lose its identity as such because it is distributed by a foreign network or network-affiliated station. Hence, CHEK–TV cannot be considered an independent station under Section 76.5(n), and King's carriage proposal, being inconsistent with the Rules, must be denied. The Yakima stations have raised other objections to carriage of CHEK–TV, but in view of our action herein, we need not pass on them.

In view of the foregoing, the Commission finds that a grant of the subject applications would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the above-captioned applications for certificates of compliance, filed by King Videocable Company, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-119

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re MICKELSON MEDIA, INC., LAS VEGAS, N. MEX. For Certificate of Compliance	CAC-444 (NM008)

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 8, 1973)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT.

1. Mickelson Media, Inc. operates a 475-subscriber cable television system at Las Vegas, New Mexico, which is located outside of all major and smaller television markets. The system currently provides its subscribers with the following television broadcast signals:

KOB-TV (NBC Channel 4), Albuquerque, N.M.
KOAT-TV (ABC Channel 7), Albuquerque, N.M.
KGGM-TV (CBS Channel 13), Albuquerque, N.M.
KNME-TV (Educ. Channel 5), Albuquerque, N.M.

There are no additional television broadcast stations or television translator stations which, on request of the relevant licensee or permittee, would be required to be carried.

2. On May 24, 1972, Mickelson filed an application for certificate of compliance, requesting authorization to carry the following additional television signals:

KTLA (Ind. Channel 5), Los Angeles, Calif.
KTTV (Ind. Channel 11), Los Angeles, Calif.
XEPM-TV (Spanish Language, Channel 2), Juarez, Chihuahua, Mexico

Carriage of these signals is consistent with the provision of Section 76.57 of the Commission's Rules.

3. Spanish International Communications Corporation, licensee of Station KMEX-TV, Los Angeles, California, has objected to the proposed carriage of XEPM-TV. Spanish International argues that cable carriage of Mexican stations should be prohibited where domestic Spanish-language programming is available to the cable operator either off-the-air or via microwave. Since Mickelson proposes to carry two Los Angeles independent signals via common carrier microwave (see *American Television Relay, Inc.*, File Nos. 3650-3653 and 2786-2787-C1-P-67), it is alleged that the Los Angeles Spanish-language station (KMEX-TV) can and should be carried, as well, especially

since the microwave capacity is available while a separate route would be necessary to relay XEPM–TV.[1] Spanish International argues that the economic viability of domestic Spanish-language stations may be threatened by cable importation of Mexican signals since domestic stations rely on Mexican programming and must pay substantial duties and charges to obtain that programming which often is not made available until as much as a year or more from the date of its first Mexican transmission.

4. We have previously considered Spanish International's general arguments in connection with the cable television rulemaking proceedings in Docket 18397 et al. In our August 5, 1971, "Letter to Congress," 31 FCC 2d 115, we expressed our intent to permit unrestricted importation of foreign language television signals. Following that letter, Spanish International requested the Commission to reconsider. Nevertheless, in the *Cable Television Report and Order*, 36 FCC 2d 143, 180 n. 50, we adopted rules permitting the importation of foreign language signals, stating:

> We recognize the arguments in favor of supporting domestic stations. However, above all, we are attempting to encourage carriage of foreign language stations. Therefore, absent the unusual situation, we do not think any additional burden should be imposed on the cable systems involved.

Thereafter, Spanish International filed a petition for reconsideration of the *Cable Television Report and Order*. In denying that petition we said, at 36 FCC 2d 326, 335:

> We are attempting to encourage the carriage of foreign language programing. Where there is a local, Spanish-language station, it will of course get carriage priority. But outside its own market, where there is no "right" of carriage and no special need for protection against other stations programed in the same language, it is in the public interest to make foreign language programing available without impediment. In unusual situations where a domestic Spanish-language station makes a compelling demonstration for relief with respect to a particular application, we can afford such relief under § 76.7.

5. Turning to the specifics of Spanish International's present opposition, we note first that KMEX–TV is not local to the Las Vegas system, being some 750 miles distant, and, thus, has no "right" to carriage. Second, there is no showing that Spanish International or KMEX–TV will be harmed by the granting of this application; essentially Spanish International merely repeats arguments that we have already rejected. Since Spanish International has not met its substantial burden in attempting to prevent signal carriage consistent with our rules, its opposition will be denied.[2]

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

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[1] Mickelson's reply indicates that in reality the Los Angeles independent signals and the Juarez signal are available on the same microwave route, but that a completely new route would be necessary to relay KMEX–TV to Las Vegas.

[2] Spanish International has requested that all certificate applications involving the carriage of Mexican signals be consolidated so that the Commission can assess the full import of its policies. We have previously stated that since we are attempting to encourage the carriage of foreign language programming, special relief may be afforded only in those unusual situations where a domestic Spanish language station makes a compelling demonstration with respect to a *particular* application. Hence, the request for consolidation will be denied.

Accordingly, IT IS ORDERED, That the captioned application for certificate of compliance filed by Mickelson Media, Inc., IS GRANTED.

IT IS FURTHER ORDERED, That the "Opposition to Application for Certificate of Compliance" and request for consolidation filed by Spanish International Communications Corporation ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-149

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re MORGAN COUNTY TELE-CABLE, INC., MARTINSVILLE, IND. For Certificate of Compliance	CAC-380 IN061

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT

1. On May 9, 1972, Morgan County Tele-Cable Inc., filed an "Application for Certificate of Compliance" (CAC-380) for a new cable television system to operate at Martinsville, Indiana, a community in the Indianapolis-Bloomington market (#16). The proposed system is to operate with 27 channel capacity to offer approximately 9,700 persons the following television signals: WISH-TV (CBS), WFBM-TV (NBC), WLWI (ABC), WURD (Ind.), WFYI (Educ.), all Indianapolis. Indiana; WTTV (Ind.), WTIV (Educ.), Bloomington, Indiana; WGN-TV (Ind.), Chicago, Illinois; and WXIX-TV (Ind.), Cincinnati, Ohio. On June 16, 1972, the licensee of WTVV filed an "Opposition by Sarkes Tarzian, Inc., to Application for Certificate of Compliance" and the licensee of WISH-TV filed an "Objection of Indiana Broadcasting Corporation pursuant to Section 76.17." And on January 23, 1973, Morgan County filed a "Reply to Oppositions."

2. Sarkes Tarzian objects to this application on the basis that it is inconsistent with the franchise requirements of Section 76.31 of the Commission's Rules in the following respects: (a) there is no showing that the franchise was issued after a full public proceeding consistent with Section 76.31(a)(1) of the Rules; (b) the franchise does not contain a construction time table consistent with Section 76.31(a)(2) of the Rules; (c) the franchise is of unlimited duration and thus inconsistent with Section 76.31(a)(3) of the Rules; (d) the franchise is inconsistent with Section 76.31(a)(4) of the Rules to the extent no provision is made for dealing with rate changes; and (e) the franchise is inconsistent with Section 76.31(a)(5) of the Rules to the extent that it makes no provision for investigation and resolution of service complaints. Morgan County responds to these objections as follows: (a) the franchise was granted after a public proceeding; (b) construction is to start immediately after Commission approval is granted and pole attachment agreements obtained; (c) the franchise is either

of indefinite duration or 25 years from August 2, 1965;[1] (d) the franchise fixes maximum rates, and rates in excess of these can not be charged without approval of the franchising authority; and (e) it will maintain an office in Martinsville to handle complaints. We find these representations sufficient to support the conclusion that Morgan County's proposal is in substantial compliance with our requirements sufficient to justify a grant until March 31, 1977, *CATV of Rockford, Inc.*, FCC 72-1005, 38 FCC 2d 10; *LVO Cable of Shreveport-Bossier City*, FCC 72-954, 37 FCC 2d 1037. Indiana Broadcasting advances essentially the same objections to the franchise—plus an argument of noncompliance with Section 76.31(a)(6) of the Rules based on failure to provide for changes in this Commission's rules—and we reject them for the same reasons.[2]

3. Indiana Broadcasting raises two additional objections: (a) that Morgan County has not indicated that it will comply with the Commission's syndicated exclusivity rules, and (b) that Morgan County has not provided sufficient showing regarding its plans for its access channels to satisfy Section 76.13(b) of the Rules. We rule on these objections as follows: (a) cable systems are expected to comply with the syndicated exclusivity requirement; however, the certificating process does not contain any requirement that cable systems affirmatively agree to comply with this rule. In any event, we note and rely on Morgan County's representation that it intends to comply with the Commission's Rules. (b) In its application, Morgan County states its plans as follows:

5. *Non-Broadcast Activities*

Upon completion of construction, the system will offer a local origination channel and the customary automated services. The system will comply with the requirements of the Commission's Rules relating to non-broadcast activities, specifically:

a. the system will operate with a 27-channel capacity;
b. the system will provide bandwidth for non-broadcast uses equivalent to the bandwidth used for broadcast purposes;
c. the system will expand channel capacity as existing channel availability is exhausted, in compliance with the Commission's Rule 76.251(a)(8);
d. the system will dedicate one free, non-commercial public access channel available at all times on a first-come, first-served, non-discriminatory basis pursuant to the Commission's standards and to more detailed rules which will be adopted by the system;
e. the system will have available protection [sic] facilities for public use in connection with the public access channel;
f. the system will allocate one channel each for local government and local educational use, available without charge during the first five years;[3]
g. the system will offer all excess channel capacity for leased access services;
h. the system will have the capacity for two-way non-voice return communications;
i. the system will exercise no control over program content except to the extent necessary to insure compliance with the operating rules described in § 76.251(a)(11) of the Commission's Rules.

[1] Morgan County's franchise was granted July 7, 1965.
[2] Cable television operators are of course expected to comply with the Commission's rules whether or not such a provision is included in a franchise.
[3] We understand this to be a restatement of Section 76.251(a)(10) of the Rules and expect the applicant to adhere to the terms of that provision.

We believe these representations are adequate. Compare *Viking Media Corporation*, FCC 72–875, 37 FCC 2d 605, 606. Accordingly, Indiana Broadcasting's objection will be denied.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition by Sarkes Tarzian, Inc., to Application for Certificate of Compliance" filed June 16, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the "Objection of Indiana Broadcasting Corporation Pursuant to Section 76.17" filed June 16, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application (CAC–380) for certificate of compliance filed May 9, 1972, by Morgan County Tele-Cable, Inc., IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–171

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Application of NORTHERN MOBILE TELEPHONE CO. For Consent To Assignment of Station KQB688, Ravenna, Ohio to Airsignal International, Inc.	File No. 7397–C2–AL–72

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 16, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has for consideration the above-captioned application for consent to assignment of license from Northern Mobile Telephone Company (Northern) to Airsignal International, Inc. (Airsignal) in the Domestic Public Land Mobile Radio Service (DPLMRS) at Ravenna, Ohio; a Petition to Deny filed by Cleveland Mobile Telephone Company, Inc. (Cleveland or Petitioner); an Opposition to the petition filed by Airsignal; and a reply filed by Cleveland.

2. Northern is the licensee of Station KQB688, a radio common carrier having transmitter locations at Hinckley and Freedom, Ohio. The proposed assignee is a wholly owned subsidiary of Western Union International, Inc. and is the licensee of 18 DPLMRS and Rural Radio stations in nine (9) states. Five other DPLMRS stations are licensed to subsidiaries of Airsignal itself.

STANDING

3. The assignment application was placed on Public Notice April 24, 1972. Cleveland filed its petition on May 24, 1972 as the licensee of radio common carrier stations KQB692 and KQA646 serving the Cleveland, Ohio area.

4. To establish standing, Petitioner states that Northern's two locations enable it to serve a substantial part of Cleveland's own service area, thereby placing the two in a competitive position for the same market. Cleveland further argues that an assignment of Station KQB688 to Airsignal would lead to even greater competition because of the assignee's potential economic strength allegedly obtained from Western Union International capital.

5. We find that Cleveland has presented sufficient facts to afford its standing in this case. Northern's FCC Form L for the period ending December 31, 1971 lists 40 subscribers and a $1,898 net loss from DPLMRS operations. While it is true that Cleveland's FCC Form L

for the same period shows that it is the dominant of the two carriers, the economic resources that Airsignal will undoubtedly bring to the market area will place it in a far better financial position than that of the present licensee, Northern. Since the proposed assignment would transfer the license from a financially marginal entity to a financially powerful enterprise already experienced in the operation of radio common carriers, it is reasonable to conclude that the proposed assignee would compete with the Petitioner substantially more effectively than had the proposed assignor, see *Broadcast Enterprises, Inc. v. FCC*, 129 U.S. App. D.C. 68, 390 F. 2d 483 (1968). Under such circumstances, we find that Cleveland has standing.

CROSS SUBSIDIZATION

6. Cleveland states that those Airsignal stations which operate at a loss are being subsidized either by Airsignal's profitable RCC enterprises, by WUI itself, or by both in concert. The result, according to Petitioner, is to place a burden on the public receiving service from the profitable stations or from the parent WUI. Specifically, it points out that Northern's FCC Form L showed a net loss, thus assuring that the new licensee would require subsidization. Moreover, Cleveland contends that only a hearing can determine the extent of cross-subsidization and how it effects the public.

7. We find no basis upon which to grant Petitioner's request for hearing. Cleveland has offered conclusionary allegations only. It has not made factual contentions on which to base a claim of discriminatory rates, nor has it demonstrated that the public would suffer from the planned financing of the proposed Airsignal facility. Its allegations are accordingly insufficient to warrant a hearing pursuant to Section 309(d)(2) of the Communications Act of 1934, as amended.

CERTIFICATION OF THE PUCO

8. On March 20, 1970, some two years before the filing of the instant assignment application, Northern filed an application with the Public Utilities Commission of Ohio for authorization to serve Garrettsville and Hinckley. On February 15, 1972 an examiner for that Commission recommended a grant to the extent that no infringement upon other RCC's in the area would occur. No mention of any proceeding before the PUCO was included in the assignment application.

9. Cleveland asserts that this information was a material fact, and as such should have been included within the assignment proposal since it was known to the parties prior to the filing of the application. Petitioner argues that if the State were to grant certification to Northern the assignment would then be subject to prior PUCO approval pursuant to both State law and Section 21.15(c)(4) of the Commission's Rules, for the certification would not be automatically transferred to the assignee.

10. The proceeding before the PUCO involving authorization to serve Garrettsville and Hinckley is of no concern to this Commission as it relates to the assignment application, since at the present time,

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it has no affect on the proposed assignment. In addition, the assignment application, itself, does not require the filing of such information. If the converse were true and the Garrettsville and Hinckley proposals were before this Commission, then Northern would have been obligated to inform the Commission of the pendency of that matter before the PUCO.

11. We find that there are no substantial and material questions of fact on the basis of the application, the pleadings filed, or other matters which we may officially notice, and that a grant of the Northern Mobile Telephone Company assignment application would serve the public interest, convenience, and necessity.

12. Accordingly, IT IS ORDERED, That the captioned application of Northern Mobile Telephone Company for consent to assignment of license of Station KQB688 at Ravenna, Ohio to Airsignal International, Inc. IS GRANTED; and the Petition to Deny filed by Cleveland Mobile Telephone, Inc., on May 24, 1972 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-148

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re SARATOGA CABLE TV CO., INC., SARATOGA SPRINGS, N.Y. For Certificate of Compliance	CAC-722, CSR-229 NY397

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. On June 22, 1972, Saratoga Cable TV Company, Inc., filed an "Application for Certificate of Compliance" (CAC-722) in which it proposed to operate a new cable television system at Saratoga Springs, New York, a community in the Albany-Schenectady-Troy television market (the 34th largest). Objections to this application were filed by Albany Television, Inc., licensee of Television Broadcast Station WTEN, Albany, New York, and by Sonderling Broadcasting Corporation, licensee of Television Broadcast Station WAST, Albany, New York. In addition, Faith Center, licensee of Station WHCT-TV, Hartford, Connecticut, filed a letter with respect to this application. Thereafter, on August 28, 1972, Saratoga Cable filed a "Reply to Oppositions and Petition for Special Relief" to which Sonderling and Albany Television have responded.

2. The only contested issue regarding this application relates to signal carriage. Saratoga Cable first proposed to carry the following television signals on its system: WAST (ABC), and WTEN (CBS), both Albany, New York; WRGB (NBC), and WMHT (Educ.), both Schenectady, New York; WSBK-TV (Ind.), Boston, Massachusetts; and WOR-TV (Ind.), and WPIX (Ind.), both New York, New York. This proposal was challenged by the Albany television licensees as inconsistent with Section 76.61(b)(2) of the Commission's Rules [1] since

[1] Section 76.61(b)(2)(i) of the Rules provides that, "For the first and second additional signals, if any, a cable television system may carry the signals of any independent television station: *Provided, however,* That if signals of stations in the first 25 major television markets (see § 76.51(a)) are carried pursuant to this subparagraph, such signals shall be taken from one or both of the two such closest markets, where such signals are available. If a third additional signal may be carried, a system shall carry the signal of any independent UHF television stations located within 200 air miles of the reference point for the community of the system (see § 76.53), or, if there is no such station, either the signal of any independent VHF television station located within 200 air miles of the reference point for the community of the system, or the signal of any independent UHF television station.

NOTE: It is not contemplated that waiver of the provisions of this subparagraph will be granted.

the two closest markets in the first 25 major television markets are Boston and Hartford, where WHCT–TV is located. Consequently, Section 76.61(b)(2) of the Rules would prohibit importation of independent signals from New York City, the third closest market. Saratoga Cable argued that WHCT–TV's programs are heavily religious and that it should not, therefore, be treated as an independent station for purposes of Section 76.61(b)(2) of the Rules. During the pendency of this application, the Commission considered and rejected this argument, par. 21, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 334, and, thereafter, Saratoga Cable amended its application to propose carriage of WHCT–TV [2] and a waiver of the rules to allow it nonetheless to carry WOR–TV, WPIX and WSBK–TV—a total of four rather than three independent signals.

3. In support of its waiver request, Saratoga Cable argues: (a) that in par. 25, *Reconsideration of Cable Television Report and Order*, *id.*, the Commission indicated that it is "not unmindful of the need for special relief in unusual circumstances"; (b) that WHCT–TV triggers the present controversy but—because of its specialized programs with limited appeal—it is similar to a foreign language or educational station and similarly should not be counted towards a system's quota of distant signals; (c) that the Commission authorized carriage of New York independent signals near Saratoga Springs in *Champlain Cablevision, Inc.*, FCC 70–813, 24 FCC 2d 371, and there is no reason to refuse such carriage here since Saratoga Springs is closer to New York City than is Lake George; and (d) that grant of the relief requested would not have an adverse impact on Albany market stations. We rule on Saratoga Cable's arguments as follows: (a) this citation is irrelevant since it refers to possible waivers of the leapfrog rules while the issue here is whether to allow Saratoga Cable to carry four independent signals rather than three; (b) in general, we have rejected the argument that religious stations should not be treated as independents, par. 21, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 334. Moreover—even if we were prepared to accept this argument in the abstract—Saratoga Cable has not attempted to show that WHCT–TV's programs are so specialized that such a rule would be applicable. Compare *Capitol District Better T.V., Inc.*, FCC 73 —, — FCC 2d —; (c) in *Champlain Cablevision* the Commission waived the leapfrog restrictions of its then-existing interim processing policies to allow a system outside the specified zones of all television stations to leapfrog various stations (including WHCT–TV) in order to deliver New York City independent signals to Lake George, New York. Since, however, a system beyond all markets is now exempt from leapfrog restrictions, we do not find the cited case relevant; and (d) in view of our rulings on (a)–(c) above, this also does not appear relevant. And even if it did, Saratoga Cable has not adequately supported the argument. In these circumstances, Saratoga Cable's waiver request will be denied.

4. Although not raised by the parties, it is conceded that Saratoga Cable's franchise (granted May 11, 1965) is not entirely consistent

[2] Faith Center has only sought carriage of WHCT–TV—it does not seek enforcement of Section 76.61(b)(2) of the Rules.

with Section 76.31 of the Rules (for example, it is not clear that the franchising authority has the control over subscriber rates contemplated by Section 76.31(a)(4) of the Rules). Consequently, although we find the franchise to be in substantial compliance with our policies, we will issue a certificate of compliance only until March 31, 1977. E.g., *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10. The remaining question for decision—in view of our ruling in par. 3 above—is the independent signals to be authorized to Saratoga Cable. Consistent with Section 76.61(b)(2) of the Rules, these will be: WHCT–TV (closest market of first 25 major markets); WSBK–TV (second closest market of first 25 major markets); and one independent UHF television station located within 200 air miles of the Saratoga Springs reference point, which Saratoga Cable may select. A certificate of compliance will be issued when Saratoga Cable advises the Commission of its choice.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the relief requested in Faith Center's letter of August 9, 1972, IS GRANTED.

IT IS FURTHER ORDERED, That the "Objection to Application for Certificate of Compliance" filed August 3, 1972, by Sonderling Broadcasting Corporation IS GRANTED to the extent indicated above, and otherwise IS DENIED.

IT IS FURTHER ORDERED, That the "Objection to Application" filed August 7, 1972, by Albany Television, Inc., IS GRANTED to the extent indicated above, and otherwise IS DENIED.

IT IS FURTHER ORDERED, That Saratoga Cable TV Company, Inc.'s application (CAC–722) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

109-028—73——6

F.C.C. 73-145

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SATELLITE SYSTEMS CORP., K. I. SAWYER AIR FORCE BASE, MICH. For Construction Permits in the Cable Television Relay Service	CPCAR-350 CPCAR-351

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. Pending before the Commission are the captioned applications for construction permits in the Cable Television Relay Service (Part 78 of the Commission's Rules) filed by Satellite Systems Corporation, operator of a cable television system at the K. I. Sawyer Air Force Base on the upper Michigan peninsula. Satellite Systems indicates that it is now authorized to carry the signals of Television Stations WBAY-TV and WLUK-TV, Green Bay, Wisconsin and that it has in the past received these signals over the facilities of a microwave common carrier.[1] It now wishes to utilize its own facilities for reception of these signals and has accordingly filed the subject applications.

2. In response to these applications, American Microwave & Communications, Inc. (AMC) filed a petition to deny or designate for hearing. AMC indicates that it is now providing two channels of service carrying the signals of WLUK-TV and WFRV-TV to the CATV system serving Sawyer Air Force Base and that it has an application pending to provide an additional channel of microwave service to the Sawyer Air Force Base and several other communities in the vicinity. AMC predicates its opposition to a grant of the applications, not on any claim of economic injury, but on certain allegations concerning the licensee of Station WLUK-TV, Marquette, Michigan. According to AMC, WLUK-TV filed an opposition to its application to provide the signal of WBAY-TV to the cable television systems served by its station KWN-57, but did not file any opposition to Satellite Systems' applications in the cable television relay service to carry the same signal. AMC questions whether this situation did not develop because Satellite Systems proposes to make use of an existing antenna structure owned by WLUK, Inc. AMC states:

> Specifically, it is alleged that WLUK, Inc. may well have protested the original AMC microwave common carrier applications solely for the purpose of deriving

[1] Applicant indicates that it was carrying WBAY-TV before March, 1972, but that the availability of WBAY-TV has been restricted due to limitations on the common carrier microwave facilities over which it has been received.

economic advantage on the leasing of its own facilities to a competing radio service.

It is suggested that if in fact WLUK, Inc. did protest the application of AMC, and solely to interfere with the introduction of the service in question so that the customer would in fact seek and obtain alternative means of providing such service and would come to WLUK, Inc. to rent or lease the facilities in question, then such action is totally inconsistent with its responsibilities as a broadcast licensee of the Commission.

AMC also alleges that WLUK–TV objected to its application on the grounds that the signals in question were not grandfathered. AMC responded to these oppositions with affidavits showing that the signals were in fact carried and thus grandfathered. Because WLUK–TV did not raise the same question in response to the CAR station applications, AMC states "questions exist as to why WLUK–TV does not take a consistent position thereto, as with virtually identical applications by AMC." AMC states that it does not have within its knowledge the answer to the questions it raises but urges that they warrant inquiry by the Commission.

3. Both Satellite Systems and WLUK, Inc. responded to this petition to deny. WLUK, Inc. denies that there is any foundation for any of the allegations made and indicates that it neither uses, owns, nor has any economic interest in the antenna sites which Satellite Systems proposes to use, having sold its interest on April 1, 1972. An affidavit was also submitted by a Mr. Lou W. Chappell indicating that WBAY–TV was not carried on the system serving Sawyer Air Force Base between July of 1965 and December of 1969. In its response, Satellite Systems questions what standing AMC has in this proceeding, denies that there are any reasons for denying its application or setting it for hearing, and suggests that information concerning the wrongdoing of WLUK, Inc. should be directed to the attention of the Commission's Broadcast Bureau for appropriate action. Satellite indicates that the antenna sites in question were purchased by the principals of Satellite for use with the facilities applied for.

4. AMC filed a reply to these responses arguing that it is irrelevant if WLUK, Inc. obtained an economic advantage by selling its antenna site rather than leasing it. AMC's reply also included an affidavit by its President, Mr. James A. Klungness, stating that he had not spoken to Mr. Chappell for more than two years on any subject. This was intended as a refutation of the Chappell affidavit in which Mr. Chappell stated that Mr. Klungness had "orally confirmed to me" that WBAY–TV was not carried on the system between July 1965 and December 1969. In fact, according to the Klungness affidavit, the signal was carried on a switched basis during that period.

5. It appears that Satellite Systems is eligible to hold the authorizations applied for and that there are no technical impediments to a grant of the requested construction permits. Although there is some dispute as to the specific periods during which the signal of WBAY–TV has been carried,[2] there appears to be no dispute that the signal

[2] More specifically, the Chappell affidavit filed by WLUK, Inc. states "2. That from July 1, 1965 until December, 1969 the Iron Range CATV System did not carry the programming of WBAY–TV, Green Bay, Wisconsin. 3. That the K.I. Sawyer Air Force Base has been a part of the Iron Range CATV System and that the same programming that was fed into the Marquette CATV System was also fed into the K.I. Sawyer Air Force Base System." The Klungness affidavit filed by AMC states "There was not any interruption

was being carried on a daily switched basis on and before March 31, 1972 and that such carriage is authorized. Further, it appears that all of the questions raised in the petition to deny filed by American Microwave & Communications suggesting possible misconduct and need for Commission investigation pertain to actions of WLUK, Inc. In view of the fact that these allegations do not pertain to the applicant it would not be appropriate to deny or set for hearing the subject applications. The applications will accordingly be granted.

Accordingly, IT IS ORDERED, That the "Petition to Deny or Designate for Hearing" filed May 11, 1972 by American Microwave & Communications, Inc., IS DENIED.

IT IS FURTHER ORDERED, pursuant to Section 309 of the Communications Act of 1934, as amended, and Section 78.1, *et seq.* of the Commission's Rules, that the above-captioned applications ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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of the microwaving of WBAY signals to that area [Marquette County] during 1965 through 1969. WBAY was carried by all cable systems in that area on a switched basis." The applicant filed an affidavit by its treasurer, William G. Jackson, that states "the signals of WBAY-TV Ch. 2 Green Bay, Wisconsin were carried on the Cable TV System serving K.I. Sawyer Air Force Base, Michigan on a daily basis on and before March 31, 1972." The applicant also submitted an affidavit of Colonel Howard Jones, Commander of the Sawyer Air Force Base that states "signals of WBAY-TV Ch. 2 Green Bay, Wisconsin have been carried on the Cable TV system serving K.I. Sawyer Air Force Base daily, on a switched basis, on and before March 31, 1972."

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
MRS. CARMEN C. RIHERD, KISSIMMEE, FLA.
Concerning Section 315, Political Broadcast Re Station WACY

FEBRUARY 14, 1973.

MRS. CARMEN C. RIHERD,
816 Canterbury Lane,
Kissimmee, Fla.

DEAR MRS. RIHERD: This letter will refer to your June 10, 1972 complaint against radio station WACY, Kissimmee, Florida. We regret that we are only now able to respond to your letter, but because the limited staff was for many months swamped with complaints and inquiries relating to the 1972 conventions and elections, which would have become moot unless resolved at once, and since our analysis indicated that your case involved a post-election matter, it was necessary to postpone consideration of your complaint. As you know, the licensee was asked for its comments regarding your complaint; its comments were filed on August 17, 1972, and your response to the comments was received August 23, 1972.

You state that you were a legally qualified candidate for the office of City Commissioner in Kissimmee, Florida; that your opponent, an incumbent City Commissioner, was invited to participate in a newscast featuring a panel discussion in which the participants discussed issues which you allege reflected on the election; that this broadcast was presented on March 25, 1972, three days before the election; and that the station did not invite you to participate. You indicate that you knew of the broadcast but did not request equal time due to the fact the broadcast was only three days before the election, and that this would not have afforded you sufficient time to prepare any material. In addition you allege that on March 18, 1972, Mr. Larry Gibson, an employee of station WACY, endorsed certain candidates over others, including your opponent for the office of City Commissioner, and made unfavorable comments about your candidacy; and that the station failed to notify you of the broadcast and offer you an opportunity to respond.

In reply, WACY states that the March 25, 1972 news program was broadcast to inform the public on the issues concerning the city; that no mention was made of policies or the upcoming election; and that your name was not mentioned in any context. WACY further states that twenty-five minutes of free time had been donated to all candidates for local office; that you had purchased additional spots; and that this demonstrates that you did have an ample opportunity to present your

views to the public. The station acknowledges that on March 18 Mr. Gibson endorsed certain candidates over others, but denies it was an editorial.

As you are aware, if a licensee permits any person who is a legally qualified candidate for any public office to use a broadcasting facility, he must, if request is timely made, afford "equal opportunities" to all other candidates for that office in the use of such broadcasting facility. However, if a legally qualified candidate appears on a bona fide newscast, bona fide news interview, bona fide documentary, or on-the-spot coverage of a bona fide news event, such appearance shall not be deemed a use of a broadcasting station in accordance with the provisions of Section 315 of the Communications Act of 1934, as amended.

It cannot be determined from the information before the Commission whether the March 25, 1972 program could be considered a bona fide newscast and therefore exempt under Section 315, or whether your opponents' appearance on this program would be classified a "use", thereby subjecting the station to the "equal opportunities" requirements of Section 315. However, we need not make that determination here. The licensee stated that the March 25 program was aired to discuss the city of Kissimmee's position with regard to an engineering contract. Assuming *arguendo* the program was not a bona fide newscast which would exempt it from the 315 requirement, the station would have had no obligation to notify you of your right to "equal time". (See Q. and A. 3, Part VI, of the enclosed Public Notice of August 7, 1970, "Use of Broadcast Facilities by Candidates for Public Office.") You stated that you had knowledge the program was to be broadcast. Under these circumstances, it appears that you would have had ample opportunity to request "equal time". Since you did not do so, it cannot be said that the licensee acted unreasonably or in bad faith.

If the March 25 broadcast were a bona fide newscast, the question then would be raised as to whether the issues therein were controversial issues of public importance and whether contrasting views were presented. However, before the Commission can effectively consider a fairness doctrine complaint it must receive specific information including: (1) the specific issue of a controversial nature of public importance broadcast; (2) the basis for the claim that the issue was a controversial issue of public importance, either nationally or in the station's local area at the time of the broadcast; (3) reasonable grounds for the claim that the station broadcast only one side of the issue in its overall programming, including an accurate summary of the views broadcast and presented by the station; and (4) whether the station has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on the issue. If the issues discussed on the program were subject to the fairness doctrine and if you furnish the above requested information, further consideration will be given to this aspect of your complaint.

With respect to the alleged personal attack broadcast by Mr. Gibson March 18, 1972, the Commission expects a complainant to submit specific information indicating: (1) the words or statements broadcast; (2) the basis for the claim that the words broadcast constitute an attack

upon the honesty, character, integrity or like personal qualities of an identified person or group; (3) the basis for the claim that a personal attack was broadcast during the presentation of views on a controversial issue of public importance; and (4) the basis for the claim that that which was discussed was a controversial issue of public importance, either nationally or in the station's local area, at the time of the broadcast (complainant should include an accurate summary of the view or views presented and broadcast by the station). Inasmuch as you have not furnished any evidence that the station specifically attacked your honesty, character, integrity or like personal qualities during the presentation of views of a controversial issue of public importance, no Commission action at this time is warranted.

As to whether the March 18 broadcast constituted an editorial endorsement of your opponent, the licensee has stated that Mr. Gibson's comments were personal selections intended as an introduction for this "talk" program and to encourage listeners to comment on the air, and were not authorized or intended as editorial endorsements. Section 73.123(c) of the Commission's Rules states that where a "*licensee*" uses an editorial to endorse or oppose a legally qualified candidate, it has an obligation to notify the other qualified candidate, or the candidate opposed in the editorial, of his opportunity to respond over that station's facilities. There is no evidence that the licensee, through its president or controlling stockholder, authorized these comments and it therefore cannot be said the station has failed to comply with Section 73.123(c). Comments such as those discussed above may come under the fairness doctrine, but that doctrine does not require that "equal time" be afforded to each side of a controversial issue of public importance. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming. In this connection it is noted that the licensee did give free time to each of the local candidates, including you. It cannot therefore be said on the basis of the information before the Commission that the licensee has failed to act reasonably and in good faith in this regard.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73-150

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re SENTINEL COMMUNICATIONS OF MUNCIE, INC., MUNCIE, IND. For Certificate of Compliance	CAC-1220 IN094

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. Sentinel Communications of Muncie, Inc. has filed an application for a certificate of compliance to begin cable television service at Muncie, Indiana, a community which is located outside of all television markets. The applicant proposes the carriage of the following television signals: WTTV (Ind.), Bloomington, Indiana; WRTV (NBC), WISH-TV (CBS), WLWI (ABC), WURD (Ind.), Indianapolis, Indiana; WIPB (Educ.), Muncie, Indiana; WGN-TV (Ind.), WFLD-TV (Ind.), WSNS-TV (Ind.), Chicago, Illinois. Clearview Cable of Richmond, A Joint Venture, a competitor for the Muncie cable television franchise, opposes this application on the grounds that the franchise was illegally awarded to Sentinel, and suggests that our signal carriage rules may be violated by a grant of this application.

2. There is no dispute that the franchise, awarded Sentinel on November 24, 1971, and subsequently amended January 26, 1972, is in substantial compliance with Section 76.31 of the Commission's Rules; however, Clearview argues that the applicable Indiana statute was not adhered to. According to Clearview's local counsel, the applicable Indiana statute, Section 48-7303 of *Burns Indiana Statutes*, requires that "in entering into a franchise agreement with any firm the city shall cause the full text of the franchise agreement to be published and a time fixed for a hearing thereon so that any taxpayer may appear and protest against any or all of the provisions of the franchise grant or contract." No legal proof of such publication was found by Clearview's counsel. Regarding the signal carriage proposal, Clearview concedes that Muncie is not located within the 35 mile specified zone of any commercial television broadcast station. Its argument, which is only tentatively advanced, is that the educational television station broadcasting in Muncie operates on a *commercial* channel—Channel 49—and not on a channel allocated for educational use. Therefore it is possible that Sentinel will not, in fact, be operating outside of all television markets, or so it is alleged.

3. Sentinel's reply includes copies of the franchise agreement which were published in the Muncie *Press* and *Star* in their editions of November 8, 1971. Also published was the date of the public hearing to be held by the Board of Works for the City of Muncie on this proposed agreement with Sentinel. A "Publisher's Claim" and "Publisher's Affidavit" accompanied these clippings, attesting to the fact of publication.

4. The assertion that Muncie may not lie beyond all television markets was characterized as "frivolous"; the television markets contemplated by the signal carriage rules were clearly those established for commercial television stations. That the Muncie educational station, WIPB, operates on a channel formally allocated for commercial use is irrelevant, the applicant contends.

5. We find Sentinel's response to be decisive. The submission of the pertinent newspaper clippings and affidavits answers the argument that the Muncie franchise was not published. And while the franchise was initially awarded for twenty years, we are satisfied that its other provisions are well within the criteria of acceptability established, *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10. Similarly, the contention that there exists a Muncie, Indiana television market because an educational television is licensed to operate there is also without merit. Section 76.5 of the Rules defines the major and smaller television markets in terms of commercial television stations, and our signal carriage rules operate on the basis of that definition.

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the application for Certificate of Compliance (CAC–1220) filed by Sentinel Communications of Muncie, Inc. IS GRANTED and an appropriate certificate of compliance will be issued.

IT IS FURTHER ORDERED, That the "Objection of Clearview Cable of Richmond, A Joint Venture" filed October 30, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–175

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
UNITED TELEVISION, INC. (KMSP–TV), MINNEAPOLIS, MINN.
Request for Deletion of Condition

ORDER

(Adopted February 15, 1973; Released February 16, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has before it a Petition to Stay its Order, FCC 72–1130, released December 21, 1972, which deleted the condition imposed by the Review Board in *WTCN Television, Inc.*, 14 FCC 2d 870, 14 RR 2d 4185, in response to a request from United Television, Inc. (United), licensee of station KMSP–TV, wherein the applications of stations WTCN–TV, WCCO–TV, KMSP–TV, KTCA–TV, and KTCI–TV were granted on condition that the proposed antenna structure be made available for use by present and future permittees and licensees of television facilities in the Minneapolis-St. Paul area who have already made requests or who make requests therefor upon a fair and equitable basis. The petition is filed by Midwest Radio-Television, Inc. (Midwest), licensee of station WCCO–TV, channel 4, Minneapolis. On January 26, 1973, United Television, Inc. (United), filed an opposition to the stay request.

2. Midwest and Viking Television, Inc. (Viking), permittee of station KTMA–TV, channel 23, Minneapolis, have pending petitions for reconsideration of the Commission's Order deleting the condition. In support of its stay request Midwest contends that in its petition for reconsideration it demonstrates that one of the bases upon which the Commission's Order was founded is erroneous and that, therefore, the Order is likely to be set aside. As a consequence, Midwest urges that the status quo be maintained so that no equities develop which may interfere with the disposition of the pending petitions for reconsideration.

3. In its opposition to the stay request United urges that the stay be denied because Midwest has not demonstrated likelihood that it will prevail on the merits; that irreparable injury will result if the stay is denied; and that there will be no harm to other interested parties if the stay is granted. In support, United contends that it and the FM station licensees with whom it is negotiating for tower rental will be injured while Midwest has not even alleged irreparable injury.

United also contends nothing new has been offered by Midwest to show that the situation with respect to channel 29 has changed. Concerning Viking, United alleges it has not been contacted and that Viking's plans are not definite.

4. We believe that grant of the stay is appropriate. The essential question before us is whether the factual basis of the Commission's Order deleting the condition is in error, and, if so, whether such rights as petitioners have may be prejudiced irreparably if a stay does not issue. We are of the view that so long as Viking is not certain that a separate site is available, at the very least a stay is warranted to prevent the creation of equities which could prejudice consideration of the petitions for reconsideration.

Accordingly, the Commission's Order, FCC 72–1130, deleting the condition imposed in *WTCN Television, Inc.*, 14 FCC 2d 870, released December 21, 1972, IS HEREBY STAYED pending final decision on the petitions for reconsideration of said Order, filed by Midwest Radio-Television, Inc., and Viking Television, Inc.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73-152

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re WESTERN TV CABLE CORP., SALT LAKE CITY, UTAH For Certificate of Compliance	CAC-61 UT005

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER REID DISSENTING; COMMISSIONER H. REX LEE ABSENT.

1. Western TV Cable Corporation is the operator of a cable television system in Salt Lake City, Utah, a community in the 48th largest television market (Salt Lake City). It presently carries on this system the signals of the following television stations:

KCPX-TV, ABC, Salt Lake City, Utah
KSL-TV, CBS, Salt Lake City, Utah
KUTV, NBC, Salt Lake City, Utah
KUED, Educ., Salt Lake City, Utah
KBYU-TV, Educ., Provo, Utah
KOET, Educ., Ogden, Utah

Western TV now seeks to add carriage of the signals of:

KTVU, Ind., Oakland, California
KBHK-TV, Ind., San Francisco, California
KTXL, Ind., Sacramento, California

In order to obtain authorization to add carriage of these signals Western TV has filed an application for a Certificate of Compliance pursuant to Part 76, Subpart B of the Commission's rules. In response to this application Screen Gems Stations, Inc., licensee of Station KCPX-TV, Salt Lake City filed an "Objection to Certification."

2. Screen Gems objection is directed only to the fact that Western TV has proposed for carriage stations from the San Francisco-Oakland-San Jose market instead of awaiting activation of a station in Sacramento which presently holds a construction permit or carrying closer stations from Los Angeles. In connection with its certificate application, Western TV noted that under Section 76.61 of the Rules it is required, for the first two distant independent signals it carries, to select signals from the closest two of the 25 largest television markets if signals from any of the 25 largest markets are to be carried. The

third signal, it notes, may be any independent UHF television station if there is no independent station, UHF or VHF, within 200 miles as is the case with Salt Lake City. The Sacramento-Stockton-Modesto market is the closest top 25 market to Salt Lake City and carriage of KTXL is therefore consistent with the Rules. KBHK–TV is a UHF station and its carriage as the third signal is consistent with the Rules. However, Los Angeles is approximately 22 miles closer to Salt Lake City than is Oakland and a waiver of the rules was therefore requested in order to permit carriage of Station KTVU, Oakland, as the second signal. In support of the requested waiver, Western TV argues:

(a) The San Francisco-Oakland market is approximately 608 miles from Salt Lake City and Los Angeles is approximately 581 miles from Salt Lake City. The difference is less than 4 percent of the total mileage and is *de minimis* in extent.

(b) Microwave facilities of a miscellaneous common carrier have been authorized between San Francisco and Salt Lake City and no facilities are authorized from Los Angeles to Salt Lake City or to any place in Utah. Grant of the waiver will eliminate the necessity of constructing extensive new microwave facilities serving only a limited number of customers.

(c) Grant of the requested waiver would be consistent with the policy underlying adoption of leapfrogging rules as set forth in paragraph 92 of the *Cable Television Report and Order*. In that paragraph the Commission stated that without the leapfrogging restrictions "there is a risk that most cable systems would select their stations from Los Angeles, Chicago, New York, or one of the other larger markets. There would be no general participation by broadcast stations in the benefits of cable carriage."[1] This rationale, Western TV argues, warrants a waiver in this situation since San Francisco-Oakland-San Jose is a smaller market than Los Angeles and stations from the market have not received nearly the amount of cable carriage as have Los Angeles stations which are carried extensively throughout the Southwestern United States.

3. In opposition to the requested waiver Screen Gems calls attention to the note to Section 76.61(b)(2) of the rules which indicates that waivers of this rule are not contemplated. It also notes that although microwave facilities are not now authorized from Los Angeles to Salt Lake City, carriage of Los Angeles signals by Western TV would encourage the construction of such facilities and urges that Western TV could fully comply with the rules by carrying the signal of station KMUV–TV, Sacramento after it is activated.

4. Western TV's operation as proposed is entirely consistent with the rules, except for carriage of KTVU with respect to which a waiver has been requested.[2] In adopting the rules, particular concern was expressed that, in the absence of leapfrogging restrictions, a limited number of stations from the largest markets would be carried to the exclusion of all other stations. Thus whatever benefits could be obtained from cable carriage would be confined to these few stations.[3] Los Angeles stations, by virtue of their popularity and carriage on common carrier microwave facilities in the southwestern United States

[1] 36 FCC 2d 141, 179 (1972).

[2] Contrary to the Screen Gems suggestion there is no provision in the rules that would require Western TV to carry the signal of Station KMUV–TV, channel 15, Sacramento, California which has a construction permit but is not yet operational. The construction permit for this station was granted on July 31, 1968. Recent filings concerning the station as well as the Commission's *First Report and Order in Docket 18261*, 23 FCC 2d 325 (1970), reserving channel 15 for land mobile services, suggest that its activation is not imminent.

[3] *Cable Television Report and Order*, 36 FCC 2d 141, para. 92 (1972).

have had particular success in obtaining carriage. In contrast, San Francisco-Oakland stations, because of the market's location, have received more limited carriage. In addition, the market's location between the Seattle, Los Angeles, and Sacramenta-Stockton-Modesto markets means that it will be the first or second closest top 25 market in a smaller area than Los Angeles will be. Because the distance here involved is small, less than 4% of the total distance involved, and because this is an unusual situation in which waiver will further the policy of the rules to spread whatever benefits there may be from cable carriage among a greater number of stations, we will grant the waiver as requested.

In view of the foregoing, the Commission finds that grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection to Certification" filed May 12, 1972 by Screen Gems Stations, Inc. IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application (CAC–61) for Certificate of Compliance IS GRANTED and an appropriate Certificate of Compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-156

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request of
WGAL TELEVISION, INC. (W80AJ), WILLIAMSPORT, PA.
To Revove Condition on License of Television Translator Station

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 13, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. The Commission has before it for consideration a petition, filed November 8, 1972, by WGAL Television, Inc., licensee of television station WGAL-TV, channel 8, Lancaster, Pennsylvania (NBC), and television translator station W80AJ, Williamsport, Pennsylvania, requesting modification of the license of station W80AJ by removal of the program exclusivity condition to which the license is subject.[1] See *WGAL Television, Inc.*, 21 FCC 2d 345, 18 RR 2d 267; *WGAL Television, Inc.* (*W80AJ*), 22 FCC 2d 950, 18 RR 2d 1210; Initial Decision of Hearing Examiner in Docket No. 18850, 25 FCC 2d 1021, released August 20, 1970.

2. Briefly, the Commission, on January 28, 1970, granted without hearing the application (BPTT-1770) of WGAL Television, Inc., for a construction permit for a new 100-watt UHF television translator station to rebroadcast the programs of station WGAL-TV on output channel 80 in Williamsport. The application was, however, granted subject to a same-day nonduplication condition to protect the NBC network programming of station WBRE-TV, channel 28, Wilkes-Barre, Pennsylvania, since both stations are NBC affiliates. Williamsport is substantially beyond the predicted Grade B contour of station WGAL-TV and is within the Grade A contour of station WBRE-TV, predicted in accordance with the provisions of section 73.684(c) and (d) of the Commission's rules. Since the Commission granted WGAL's application subject to a condition not requested by the applicant, the applicant was entitled, under section 1.110 of the Commission's rules, to reject the grant as conditioned. On March 2, 1970, WGAL filed a petition for reconsideration, urging removal of the condition and stating that, if the Commission were unwilling to make an unconditional grant, the applicant desired a hearing. The Commission thereupon vacated the grant and designated the application for hearing. *WGAL Television, Inc.* (*W80AJ*), 22 FCC 2d 950, 18 RR 2d 1210. On July 23,

[1] The Commission also has before it for consideration WBRE-TV, Inc.'s opposition, filed December 6, 1972, and a reply thereto, filed December 26, 1972, by WGAL.

1970, WGAL filed, in the hearing proceeding in Docket No. 18850, a petition to terminate the hearing and for reinstatement of the conditional grant. This petition was granted August 18, 1970. The petition now before the Commission followed about a year and a half later.

3. Petitioner argues that removal of the condition is warranted by reason of a change of circumstances. The alleged change of circumstances consists of twenty letters of complaint from viewers who are allegedly unable to receive satisfactory signals either from WBRE–TV or from its translator in Williamsport.[2] On the basis of these letters, WGAL–TV urges that it is now apparent that the programming of WBRE–TV is not available to all of Williamsport and the underlying rationale of the Commission's decision to protect WBRE–TV's network programming is, therefore, faulty. WGAL–TV also argues, once again, that it is questionable whether Williamsport is within WBRE–TV's "actual" Grade B contour. This argument, however, has been thoroughly considered and rejected, and it is *res adjudicata*.[3] Of the twenty letters offered by WGAL–TV in support of its contention that WBRE–TV does not provide satisfactory service to Williamsport, seven were written by two viewers. In response to the contention that satisfactory signals are not available, WBRE–TV undertook field intensity measurements of WBRE–TV's signals in the general area of the residences of the viewers who wrote letters of complaint. WBRE–TV's conclusion, based on its measurement data, is that strong signals were available at the locations in question from either WBRE–TV directly or from the translator, or both. WGAL–TV furnished no engineering data to controvert these findings. On the record before us, we find that petitioner has provided no basis for removal of the condition and the petition will, therefore, be denied.

4. We think that one other observation is pertinent in this proceeding. WGAL is a Lancaster television station, not a Williamsport station, and it is not expected to provide service to Williamsport. See *West Michigan Telecasters, Inc.* v. *Federal Communications Commission*, ——— U.S. App. D.C. ———, 460 F 2d, 883, 23 RR 2d 2123. Reception in Williamsport of WGAL's non-duplicating programming is, no doubt, a welcome addition to the available television fare in that community, but WGAL has not established a need for its NBC network programs there.

For the reasons set forth, IT IS ORDERED, That the Petition to Remove Condition, filed herein by WGAL Television, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[2] Translator station W76AK is licensed to WBRE–TV, Inc., to serve Williamsport. It is authorized to operate with transmitter output power of 100 watts.

[3] See paragraph 4 of our Memorandum Opinion and Order in *WGAL Television, Inc. (W80AJ)*, 22 FCC 2d 950, *supra*.

F.C.C. 73-201

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ALABAMA MICROWAVE, INC. For Construction Permits in the Domestic Public Point-to-Point Microwave Radio Service for Establishment of Three New Stations at or Near Gadsden, Anniston, and Guntersville, Ala., and the Modification of One Existing Station, XRR71, at Huntsville, Ala.	Docket No. 18691 File Nos. 1481 through 1484-C1-P-70
NEWHOUSE ALABAMA MICROWAVE, INC. For Construction Permits in the Domestic Public Point-to-Point Microwave Radio Service for Establishment of the Three New Stations at or Near Birmingham, Pell City, and Anniston, Ala.	Docket No. 18692 File Nos. 147 through 149-C1-P-70

ORDER

(Adopted February 21, 1973; Released February 23, 1973)

BY THE COMMISSION:

1. The Commission has before it for consideration: (a) an application for review of the Review Board's Decision herein (34 FCC 2d 660, released May 3, 1972) filed June 2, 1972, by Newhouse Alabama Microwave, Inc., (b) Comments filed June 26, 1972, by the Chief, Common Carrier Bureau, (c) Opposition filed June 26, 1972, by Alabama Microwave, Inc., (d) Reply filed July 17, 1972, by Newhouse Alabama Microwave, Inc., (e) Petition for leave to file a supplemental statement filed July 21, 1972, by Alabama Microwave, Inc., (f) and a statement filed July 28, 1972, by Newhouse Alabama Microwave, Inc.

2. IT IS ORDERED:

(a) That the petition for leave to file a supplemental statement filed July 21, 1972, by Alabama Microwave, Inc. IS GRANTED and the supplemental statement attached to such petition IS ACCEPTED;

(b) That the above-described application for review filed June 2, 1972 by Newhouse Alabama Microwave, Inc. IS GRANTED;

(c) That oral argument herein IS SCHEDULED before the Commission *en banc* on April 3, 1973, at 9:30 a.m.

109-029—73——1

(d) That subject to the filing of a written notice of intention to appear and participate within five days after the release of this Order, the parties ARE AUTHORIZED to present oral argument as follows:

Newhouse Alabama Microwave, Inc., Twenty Minutes (20).
Chief, Common Carrier Bureau, Twenty Minutes (20).
Alabama Microwave, Inc., Thirty Minutes (30).

(e) That Newhouse Alabama Microwave, Inc. and the Chief, Common Carrier Bureau may reserve a part of their time for rebuttal.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-186

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE & TELEGRAPH CO. (A.T. & T.) Revisions of Tariff FCC No. 260, Private Line Service, Transmittal No. 11610	Docket No. 19691

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 22, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, JOHNSON AND WILEY CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. On November 13, 1972, revised tariff schedules were filed by AT&T under Transmittal Letter No. 11610. dated November 13, 1972, to become effective February 15, 1973. These revised schedules apply to voice grade private line services which are not connected to the switched telephone networks, i.e. voice grade private line services not connected to local or toll central office lines or Wide Area Telephone Service (WATS) access lines (hereafter referred to as "unmixed" private line service).

2. More specifically, the revisions would permit the carrier to engage in certain new practices not now followed with respect to those cases where customers desire to provide their own customer-provided terminal equipment or communications systems and to connect such facilities by direct electrical connection to the voice grade private line facilities of the carrier. The new proposed practices are: where such direct connections are made by the customers, the telephone company (a) will make the necessary arrangements on the customer's premises to protect against "hazardous voltages" and the "harmful effects of longitudinal imbalance" and (b) will make the necessary arrangements either at its central offices or on the customer's premises to protect against "signal power overload."

3. At the present time, and for many years past, the practices of the AT&T have been to permit such direct connections to unmixed private line services without any specific arrangements being made by the carrier to protect against hazardous voltages, longitudinal imbalance or signal power overload. The practices have been different, however, with respect to "mixed" voice grade private line services (i.e. private line services that are connected to the switched toll and exchange network). In mixed private line services the practices are the same as in all switched services, including interstate message toll and WATS services, that is, all customer-provided facilities are required to be connected through one or more carrier-provided protec-

tive couplers for which extra installation and monthly charges are imposed on the customer by the carrier. In these revised tariffs for unmixed private line services AT&T proposes to make no extra charge to customers for the protective "arrangements."

4. AT&T's basic justification for the revised tariffs is that all of its services, whether private line or switched, share in the use of common facilities in varying degrees such as local distribution cable, carrier systems, main frames in the central offices, and switching equipment and that, accordingly, all of its services, whether switched or private line and whether mixed or unmixed, have the same need for protection from the types of harm referred to above, that is, from hazardous voltages, line imbalance, and signal overload.

5. These revised tariff schedules are significant modifications of tariff proposals that were originally filed by AT&T in March, 1969 which never became effective and which were withdrawn in November, 1972 in favor of the instant proposal. As first filed, AT&T proposed to require separate "couplers" or "interfaces" in all cases of direct connection of customer facilities to unmixed private lines and to charge the customer for such couplers which could be supplied only by the telephone company. Later, in June, 1971, AT&T modified its original proposal and filed tariffs proposing that protective arrangements would be built into the "service terminal" of its unmixed private line facilities and that no extra charges would be imposed by AT&T "at that time" for such protective facilities. Many protests were lodged against this latter proposal and informal meetings were conducted by the Commission with interested parties to determine whether differences among the parties could be resolved. The principal objections were that (a) there was no need for such protective arrangements in the light of the historic omission thereof in the past and the alleged failure of the carriers to demonstrate any serious likelihood of harm from such direct connection; (b) building such arrangements into the "service terminal" facilities would seriously degrade and limit the customer's use of the service; (c) such degradation limitations would be anti-competitive in that, among other things, it would mean that no such degradation and limitation would be imposed upon customers who obtain their terminal devices or systems from the carrier and the effect would be to promote the sale of AT&T facilities; (d) requiring such protective facilities in all cases was an unwarranted and unlawful *a priori* assumption of harm from each and every item of customer-provided equipment; (e) no provision was made for such protective arrangements to be supplied by any source other than the carrier; and (f) customers ultimately would be required to pay extra charges for these protective arrangements and that the imposition of such charges for an entrenched program would further aggravate the anti-competitive features of the proposal. AT&T deferred the effective date of this particular proposal at our request until November, 1972 when, as heretofore stated, AT&T filed the tariff revisions before us.

6. Three of the eight parties that filed objections to the June, 1971 proposal of AT&T have filed statements with us concerning the revision. The Computer Time Sharing Service Section (CTSS) of the Association of Data Processing Service Organization (ADAPSO) and

the Independent Data Communications Manufacturers Association, Inc. (IDCMA) have filed letters indicating in substance that the new revision reduces the burden on the customer who does not necessarily want or need to purchase equipment from AT&T and that they will not oppose the revised tariff at this time. Both of these parties continue to express reservations about the need for the proposed protective arrangements and both state that the revised tariff is not a final solution to the alleged discrimination against users of non-telephone company equipment. Each indicates that the better solution is for technical criteria to be prescribed for such protective arrangemnts so that persons other than the telephone company may supply them, or that the carrier provide such protective arrangements in all of their private line services, irrespective of whether connected with telephone company or non-telephone company equipment, so that all customers would then be furnished the same circuit facilities by the carrier.

7. However, on February 1, 1973, MCI filed a Petition for Rejection or Suspension of the new revised tariff and this petition is now before us for action. MCI requests that we either reject or suspend the tariff filing, or failing either of these actions, to rule that:

(a) The new filing does not apply to the interconnection of the systems of specialized carriers with the private lines of AT&T; and

(b) Nothing in the Commission's action is intended to immunize AT&T from possible liability under the antitrust laws.

8. MCI makes these principal allegations against the new filing; (a) AT&T has still not demonstrated any need for the proposed protective arrangements; (b) AT&T has still not disclosed full information as to the nature of the devices so that others can manufacture them or obviate the claimed need for them; (c) AT&T still would impair fair competition; (d) AT&T has not adequately explained the costs of its devices nor has it justified its failure to charge for them or its proposal to spread all costs thereof among all users; (e) AT&T still refuses to take the proper course—that of specifying reasonable criteria to be met by those wishing to interconnect with the telephone system; and (f) the tariff does not clearly state that the new practices do not apply to interconnection with facilities of other carriers.

9. On February 9, 1973 AT&T submitted its reply to MCI's petition and objects to the petition on both procedural and substantive grounds. AT&T is correct in contending that MCI's petition violates Section 1.44(a) of our rules by combining into a single pleading requests for action delegated to the Chief, Common Carrier Bureau (rejection) with action reserved to the Commission (suspension). 47 CFR 1.44(a) We would be warranted, therefore, in refusing to consider MCI's petition because of the violation of our rules. However, we believe that certain questions discussed in MCI's petition and AT&T's reply [1] are of sufficient importance to be considered by us on our motion in the exercise of our discretion under the suspension powers given to us by Section 204 of the Act. 47 U.S.C. 204.

[1] We note that AT&T's reply, although not in violation of our rules, was not actually filed "within 3 days" after service of MCI's petition on AT&T as contemplated by 47 C.F.R. 1.773.

10. We agree with MCI that AT&T has not made a persuasive showing that there is a need for AT&T to install protective equipment in all cases where customer equipment is connected directly to unmixed voice grade private line facilities. In its reply, AT&T continues to assert that there is a need for protective equipment on private line services because all services share common facilities, such as local distribution cables, carrier systems, and main frames and all are subject to harmful voltages, line imbalance; and excessive signal levels; and that the National Academy of Sciences concluded that "uncontrolled interconnection" could cause these types of harm to private line as well as other services. However, as MCI points out, AT&T proposes under its tariffs to install such protective equipment only with respect to services installed on and after February 15, 1973 and then only with respect to services for those customers who use non-telephone equipment. Thus, on and after February 15, 1973 AT&T does not propose to install such protective facilities for customers who use telephone company equipment even though such terminal equipment may be similar to the equipment that the customer provides and equally likely to cause the same kinds of alleged harm to the carrier facilities. Moreover, AT&T does not propose to install such protective equipment for any services provided to any customers that are in service on February 14, 1973 even though those services presumably could be subject to the same types of harm. It would appear that, if there is real danger of such harm, all services should be protected.

11. With respect to MCI's assertion that AT&T has not deemed it necessary to install such protective equipment in the past for any customers connecting directly to unmixed voice grade private line facilities, AT&T's reply is that, although there has been "past interference" it cannot "be readily quantified or specificially identified and recorded," and that "past experience in this instance is not a reliable basis upon which to predicate the need for protection in the future." However, AT&T makes no persuasive factual or other showing that experience is not a reliable basis for this purpose. In view of the foregoing, we believe that substantial questions are raised as to the reasonableness of AT&T's proposal to install protective equipment only with respect to some customers and not others as the new filing proposes to do.

12. As to MCI's claim that AT&T should not be given a monopoly in the provision of the proposed "protective equipment," AT&T's reply is that these particular facilities are part of AT&T's basic service offerings and are not in the category of "terminal devices" open to competition. However, this assertion by AT&T appears to be inconsistent with its proposal to install protective equipment *only* with respect to facilities provided to certain customers to the exclusion of many, if not most, other customers using unmixed voice grade facilities. We question, therefore, whether it is reasonable to consider such equipment as part of AT&T's "basic service offerings." Thus, a valid question is raised as to whether, in lieu of giving AT&T a monopoly in this area, there should not be a standards program by which the customer or persons other than AT&T could provide such protective

arrangements to the extent that such equipment is needed to prevent harm.

13. As heretofore stated, MCI challenges the ratemaking decision of AT&T (a) to provide these protective arrangements without extra or separate charges to the customers and (b) to spread the costs thereof among all users, including message toll users. This challenge is answered by AT&T primarily on the grounds that the costs are likely to be *de minimus* but that, if it should develop that costs are substantial, AT&T would probably file tariffs setting up separate charges therefore which AT&T would appropriately justify at that time. We believe that, at least in principle, MCI raises a valid question as to the propriety of AT&T's ratemaking principles applied in this case. As to MCI's request that it be made clear that the new tariff revision does not apply to MCI's own carrier-to-carrier interconnections with AT&T's loops, the reply of AT&T contends that it is already clear that the new revision does not so apply and we agree.

14. In view of the foregoing discussion, we believe that substantial questions are raised as to the lawfulness of AT&T's tariff revisions that warrant our acting on our own motion and designating such revisions for hearing and suspending the effectiveness thereof for the maximum 3-month period provided for in Section 204 of the Act.

15. Accordingly, in view of the foregoing considerations, IT IS ORDERED, That, pursuant to the provisions of Sections 4(i), 4(j), 201, 202, 203, 204, 205, and 403 of the Communications Act of 1934, as amended, an investigation is instituted into the lawfulness of revisions in AT&T's Tariff FCC No. 260 submitted with Transmittal No. 11610 including cancellations, amendments or reissues thereof;

16. IT IS FURTHER ORDERED, That, pursuant to the provisions of Section 204 of the Communications Act, such revisions are HEREBY SUSPENDED until May 15, 1973, and AT&T shall make no changes in said schedules of charges during the pendency of this proceeding without prior approval of the Commission;

17. IT IS FURTHER ORDERED, That, without in any way limiting the scope of the investigation, it shall include consideration of the following:

(1) Whether the classifications, practices, and regulations published in the aforesaid tariff revisions are or will be unjust and unreasonable within the meaning of Section 201(b) of the act;

(2) Whether such classifications, practices, and regulations will, or could be applied to, subject any person or class of persons to unjust or unreasonable discrimination or give any undue or unreasonable preference or prejudice to any person, class of persons, or locality, within the meaning of Section 202(a) of the act;

(3) If any of such classifications, practices, and regulations are found to be unlawful, whether the Commission should prescribe classifications, practices, and regulations for the service governed by the tariffs, and if so, what should be prescribed.

18. IT IS FURTHER ORDERED, That, a hearing be held in this proceeding at the Commission's offices in Washington, D.C. at a time to be specified; and that the Administrative Law Judge to be designated to preside at the hearing shall certify the record, without prep-

aration of an initial or recommended decision, and the Chief of the Common Carrier Bureau shall thereafter issue a recommended decision which shall be subject to the submittal of exceptions and requests for oral argument as provided in 47 CFR 1.276 and 1.277, after which the Commission shall issue its decision as provided in 47 CFR 1.282; and

19. IT IS FURTHER ORDERED, That, AT&T and the associated Bell System operating companies ARE MADE parties respondents and MCI IS GRANTED leave to intervene upon filing a notice of intention to appear and participate within 20 days of the release date of this order.

20. IT IS FURTHER ORDERED, That, MCI's petition IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-43

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE & TELEGRAPH CO.— LONG LINES DEPARTMENT (A.T. & T.) Revisions of Wide Area Telephone (WATS), Tariff F.C.C. No. 259 and Private Line Service (PLS), Tariff F.C.C. No. 260 and THE WESTERN UNION TELEGRAPH CO. (WESTERN UNION). Revisions of Tariff F.C.C. No. 254	Docket No. 19419

MEMORANDUM OPINION AND ORDER

(Adopted January 10, 1973; Released January 12, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND REID DISSENTING; COMMISSIONER HOOKS ABSENT.

A. BACKGROUND

1. In a Memorandum Opinion and Order released February 7, 1972 in this docket, we suspended and instituted an investigation into the lawfulness of certain tariff revisions filed by AT&T in the above-noted interstate WATS and PLS tariffs (33 F.C.C. 2d 518). These revisions were originally scheduled to go into effect on February 4, 1972. However, we suspended them until May 4, 1972 and AT&T postponed the effective date still further until July 4, 1972.

2. As originally filed these tariffs included (a) substantial reductions in existing interstate charges for AT&T-provided "Dataphone" sets that are offered to customers who wish to connect their own data terminal facilities to the switched telephone network (either through WATS or PLS facilities); (b) establishment of new interstate charges for an AT&T-provided "automatic data access arrangement" that is also offered to customers who wish to connect their own data facilities to the switched telephone network; (c) changes in existing interstate tariff regulations to permit more flexible use of AT&T-provided "multi-channel data station equipment" offered to customers who wish to use such channel-deriving equipment in combination with voice-grade data channels obtained from the telephone company; and (d) establishment of new interstate rates for an additional category of "Dataphone" sets suitable for combined sending and receiving and for handling data at higher speeds. Each of these AT&T-provided facilities are competitive, in varying degrees, with similar equipment or

facilities offered by independent manufacturers and suppliers or other common carriers. In its petition IDCMA [1] made a number of allegations (which we summarize in paragraph 3 of our February 7, 1972 action, 33 F.C.C. 2d, at page 519), to the effect that these competitive offerings of the Bell System in its private line services were being subsidized by the monopoly services of Bell, and were anti-competitive vis-a-vis members of IDCMA who supplied similar facilities to the public in competition with Bell. Based upon these allegations, we suspended the original AT&T tariffs for the full 3-month period provided for in Section 204 of the Act and we stated that we would consider particularly the question of the lawfulness of these tariff schedules in light of their potentially anti-competitive effects (33 F.C.C. 2d, at page 520).

3. Before the original tariff schedules could go into effect AT&T applied for special permission to file revised tariffs in substitution for the original tariffs. The stated purpose of AT&T was to ameliorate the alleged anti-competitive effects of the original filing and to expedite the resolution of the issues in the hearing. Based upon alleged "changed circumstances" subsequent to the filing of the original tariffs, AT&T proposed to establish monthly rates for the "Dataphone" sets and channel-deriving equipment higher than those originally proposed and to establish monthly rates for the automatic data access arrangement lower than those originally proposed.

4. We granted AT&T's request and the substitute tariffs were filed and became effective July 3, 1972 thereby cancelling the originally filed tariffs. By virtue of language in our Memorandum Opinion and Order of February 7, 1972, the substitute tariff pages were automatically set for hearing in this docket in lieu of the original tariffs (33 F.C.C. 2d, p. 520). Inasmuch as it appeared to us that the revised tariffs might possibly ameliorate the alleged anti-competitive features of the original filing, we invited interested parties to submit comments and reply comments on the new submission. Further, by Memorandum Opinion and Order of June 26, 1972 we ordered the deferral of hearings herein until we could consider such comments (36 F.C.C. 2d 498). On about July 26, 1972 IDCMA submitted its comments in the form of a "Petition to Reject or Suspend." Although IDCMA agreed that the revisions made by AT&T in the substitute rates were in the proper direction, IDCMA contended that the revisions were not sufficient in degree at least and that the revised rates continued to be based upon cross-subsidization by the monopoly services of Bell and were anti-competitive as to the independent suppliers of competitive data devises supplied by members of IDCMA. AT&T opposed IDCMA's petition to reject or suspend [2] and urged that this proceeding be terminated. Western Union also filed comments on AT&T's substitute tariffs contending that AT&T's revised charges for its Data sets and for Multi-Channel Equipment would have a significant impact on Western Union's competitive service offerings and that AT&T's charges for such services are unduly discriminatory as between AT&T's own customers.

5. In addition to submitting its comments on the AT&T substitute tariffs, Western Union filed its own tariff schedules effective August 10,

[1] Independent Data Communications Manufacturers Association, Inc.

1972 matching the AT&T rates for certain of the Data sets offered by AT&T. On or about August 29, 1972 IDCMA filed a "Petition to Reject or Suspend" [2] the Western Union tariffs on the same basis as it opposed the revised AT&T rates.

6. On November 24, 1972, AT&T filed further revised PLS tariff schedules to become effective December 24, 1972 establishing a new rate for the first time in its interstate PLS tariffs applicable to a Series 200 Data-Phone Data Set (Type 208). This device provides for combined sending and receiving transmission and is suitable for conditioning signals at a rate of 4800 bits per second. Competitive data sets are offered by certain members of IDCMA. At our request the effective date of this tariff was postponed from December 24, 1972 until January 14, 1973. A timely Petition to Suspend was filed by IDCMA on December 29, 1972. An opposition thereto was filed by AT&T on January 9, 1973.

B. DISCUSSION

7. As indicated in the foregoing, this proceeding was commenced in February 1972 (a) to investigate the lawfulness of the charges of AT&T for providing certain data service facilities that are competitive with similar facilities available from alternative suppliers and (b) to determine whether and to what extent we should prescribe new tariffs if we should find any such unlawfulness (33 FCC 2d 518). However, the proceeding has been temporarily stayed by us pending further order (36 FCC 2d 498).

8. The questions that are now properly before us for decision are (1) whether we should terminate the proceeding herein as AT&T has urged us to do over the opposition of IDCMA; (2) whether, if we do not terminate, we should also set Western Union's matching rates for hearing in this proceeding as requested by IDCMA; and (3) whether we should suspend and set for hearing in this proceeding the recently filed interstate rate of AT&T for the 208 Data set, which IDCMA has requested us to do.

9. With respect to the question of whether we should terminate this proceeding, we are of the opinion that the substitute rates now under investigation continue to raise essentially the same cross-subsidization and anti-competitive questions that were raised by the original tariffs and which we summarized in our original action herein. (See 33 F.C.C. 2d, 518). For example, the fact that the substitute tariff reduces the prior monthly rate for AT&T's 200 Data set from $72.00 to $55.00 a month whereas the original tariff filing would have reduced the rate from $72.00 to $47.00 a month does not warrant our finding that the substitute rates are now free of any substantial questions of lawfulness. Accordingly, we conclude that the hearing herein on the original issues of lawfulness under Section 201(b) and 202(a) of the Act should proceed without any further undue delay, particularly in view of IDCMA's claims that its members are being adversely affected by

[2] We have not considered IDCMA's petition insofar as it requests "rejection" or "suspension" of tariffs for the reasons that (a) the pleading violated Section 1.44 of our Rules prohibiting joinder of requests for action delegated to the staff (rejection of tariffs) and for action by the Commission (suspension of tariffs) and (b) it violated Section 1.773 of our Rules requiring suspension requests to be filed at least 14 days before the effective date of the tariff in question.

the competitive AT&T rates and that IDCMA is entitled to a prompt hearing and resolution of its contentions. As to the second question, we agree with IDCMA that the matching rates of Western Union also raise substantially the same questions of lawfulness as do the AT&T rates. We shall therefore set the Western Union rates for hearing in this proceeding.

10. With regard to the third question, IDCMA contends in its petition to suspend and investigate the recently filed rate of AT&T for the competitive 208 Data set, that this new filing raises all of the same questions of lawfulness that prompted the Commission to suspend for the full statutory period and set for hearing the original tariffs for the other AT&T-provided data facilities involved in this proceeding; that AT&T expressly admits that its pricing of the competitive 208 Data set is based upon alleged "incremental costs" which the Commission has not as yet approved in principle and which is at issue in pending docket 18128; [3] that, in any event, AT&T has not allocated all of the carriers' costs that should be allocated to this Data set in fixing the rates; and that members of IDCMA that supply competitive Data sets are and will be adversely and unlawfully affected by AT&T's proposed rates. We believe that IDCMA raises substantial questions of lawfulness that warrant our setting the new 208 Data rates for hearing under the issues herein. Moreover, consistent with our original action on the other competitive rates in issue in this case, we shall suspend the effectiveness of the new charges for the maximum 3-month period specified in Section 204 of the Act. However, since AT&T, at our request, postponed the original effective date of the tariff from December 24, 1972 to January 14, 1973, we shall suspend the tariff for 3 months from the former, rather than the latter, date.

11. IDCMA requests further alternative relief in the form of an order that AT&T be required to give written notification to customers who may order AT&T's 208 Data set, that questions of lawfulness have been raised as to the rates therefor and that such rates are under investigation in this proceeding and are subject to being changed by the Commission. This is an entirely appropriate request and we shall order AT&T to supply such notice in the form and manner prescribed by the Chief, Common Carrier Bureau.

12. Accordingly, IT IS ORDERED, That pursuant to Sections 201, 202, 203, 204, 205, and 403 of the Communications Act of 1934, as amended, an investigation is instituted herein into the lawfulness of the tariff schedules filed (a) by AT&T with its Transmittal No. 11618, effective January 14, 1973, and (b) by Western Union under its Transmittal No. 6772; including any cancellations, amendments or reissues thereto; and that the issues heretofore specified herein shall also apply to such tariff schedules;

13. IT IS FURTHER ORDERED, That pursuant to the provisions of Section 204 of the Act, the effectiveness of the tariff schedules filed by AT&T with Transmittal No. 11618 ARE HEREBY SUSPENDED until March 24, 1973 and that AT&T shall provide the notice to customers as set forth in paragraph 11 hereof;

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[3] In its reply of January 9, 1973 AT&T also submitted alternative calculations of its costs on the basis of embedded costs which indicates costs slightly less than the "incremental" costs.

14. IT IS FURTHER ORDERED, That paragraph 5 of our order herein of June 26, 1972, 36 F.C.C. 2d, at page 449, staying the proceedings herein, IS VACATED, and the hearing in this proceeding shall commence at the Commission offices in Washington, D.C. at a time to be specified by the presiding Administrative Law Judge; and that such Administrative Law Judge shall certify the record without preparation of an initial or recommended decision, and the Chief of the Common Carrier Bureau shall thereafter issue a recommended decision which shall be subject to the submittal of exceptions and requests for oral argument as provided in 47 C.F.R. 1.276 and 1.277, after which the Commission shall issue its decision as provided in 47 C.F.R. 1.282;

15. IT IS FURTHER ORDERED, That IDCMA's Petition To Suspend IS GRANTED;

16. IT IS FURTHER ORDERED, That the Western Union Telegraph Company is named Party Respondent.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–187

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re: BIG VALLEY CABLEVISION, INC., SAN JOAQUIN COUNTY, CALIF. For Certificate of Compliance	CAC–278 CA430

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 23, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON, H. REX LEE AND WILEY CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. On April 28, 1972, Big Valley Cablevision, Inc., filed an application (CAC–278) for a certificate of compliance to operate a cable television system in certain unincorporated areas of San Joaquin County, California (located in the 25th television market). Big Valley intends to commence operation with the following California television signals: KOVR (ABC), Stockton; KCRA–TV (NBC), KXTV (CBS), KTXL (Ind.), KVIE (Educ.), and KMUV–TV (Ind., c.p.), Sacramento; KLOC–TV (Ind.), Modesto; KQED (Educ.), KBHK–TV (Ind.) and KEMO–TV (For. Lang.), San Francisco; and KTVU (Ind.), Oakland. Big Valley's application is opposed by Great Western Broadcasting Corp., licensee of Television Broadcast Station KXTV, Sacramento, California; Central California Educational Television, licensee of Television Broadcast Station KVIE, Sacramento, California; and KLOC Broadcasting Co., licensee of Station KLOC–TV, Modesto, California.

2. Central California Educational Television objects only to the proposed carriage of Station KQED for the following reasons: (a) Big Valley's franchise area is in the core of KVIE's coverage area where it obtains financial support; (b) KQED and KVIE have agreed to keep out of each other's core coverage area and Big Valley's franchise area is encompassed by KVIE's predicted Grade A contour; and (c) because KQED's program schedule duplicates a substantial portion of KVIE's schedule, importation will inevitably erode local support for KVIE among Big Valley's cable subscribers. These arguments must be rejected. Station KQED places a predicted Grade B contour over Big Valley's franchise area and KVIE's petition has not presented factual evidence that persuades us that a departure from our general rule is appropriate. Par. 12, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 330. And we note that this Commission does not give effect to private agreements between educational broadcasters to divide their audiences. E.g. *Information Transfer, Inc.*, FCC 72–1094, ——FCC 2d——. However,

we note that Station KVIE is entitled to simultaneous network program exclusivity vis-a-vis Station KQED, pursuant to Section 76.91 of the Commission's Rules.

3. Great Western and KLOC Broadcasting object to carriage of KEMO–TV. Great Western argues that KEMO–TV is not a predominantly foreign language station so that its carriage by Big Valley is not consistent with Section 76.61(e) of the Commission's Rules,[1] and, in the alternative, that if the Commission determines that KEMO–TV is a foreign language station, Big Valley should be permitted to carry only KEMO–TV's non-English programming. KLOC Broadcasting agrees that KEMO–TV is a foreign language station but argues that its carriage would have serious economic impact on KLOC–TV which broadcasts virtually all Spanish language programming from 5 P.M. to sign-off (there are a few small segments of Portuguese language programming). It appears from the information supplied that KEMO–TV is a predominantly non-English language station within the meaning of Section 76.61(e) of the Rules.[2] KLOC Broadcasting has not presented a factual showing to demonstrate economic impact from Big Valley's carriage of KEMO–TV.[3] Nor has Great Western persuaded us to vary the clear language of Section 76.61(e) of the Rules to limit KEMO–TV's carriage to only non-English language programs.

4. Great Western argues that Big Valley's franchise (awarded April 23, 1968) is inconsistent with Section 76.31 of the Rules on the following grounds: (a) it contains no showing that it was awarded after public proceedings; (b) the 30 year duration exceeds the 15 year maximum; (c) there is no provision for public participation in the process of changing rates, and it does not provide for incorporation or amendment into the franchise of modifications resulting from Commission amendment of Section 76.31; and (d) the 7% franchise fee is in excess of the Commission's 3% limit. Great Western next contends that Big Valley has failed to explain in detail its plans for availability and administration of its access channels. Finally, Great Western objects to a certificate grant unless conditioned upon the simultaneous and syndicated program exclusivity requirements of the Commission rules.

5. We rule on Great Western's objections to Big Valley's franchise as follows: (a) the resolution awarding Big Valley a franchise indicates that the franchise was awarded after solicitation of bids through

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[1] Section 76.61(e) of the Rules provides that, "In addition to the television broadcast signals carried pursuant to paragraphs (a) through (d) of this section, any such cable television system may carry any television stations broadcasting predominantly in a non-English language."

[2] In its most recent application, the licensee of KEMO–TV represented that, "Applicant expects to operate Station KEMO–TV dominantly as a foreign language facility. Each foreign language personality will have the responsibility of gathering and presenting news pertinent to his particular following. For example the Japanese broadcaster will gather news items of interest to the Japanese community, the Portuguese man will gather items of interest to the Portuguese community, etc." (File No. BALCT–455.) Moreover, it appears that the only English language programming on the station is presently carried outside prime time from 11 P.M. to 1:00 A.M., Monday through Friday. This is clearly a *de minimis* amount which falls within our rule.

[3] Although KLOC–TV places a predicted Grade B contour over portions of San Joaquin County, it is not clear on the the record that it provides a predicted contour over Big Valley's proposed system. See also Par. 23, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 334; *Mickelson Media, Inc.*, FCC 73–119, — FCC 2d —.

advertisement in a newspaper of general circulation and careful consideration in a public proceeding by the County Board of Supervisors; (b) although the 30 year franchise clearly exceeds our requirement in Section 76.31(a)(3) of the Commission's Rules, that fact alone need not preclude us from considering whether this franchise is in substantial compliance with our rules because in any event the franchise must fully conform to our standards by March 31, 1977; (c) subscriber charges have been set by the Board of Supervisors and the Board's approval is required for any increase (charges cannot be raised for the first year of operation); and (d) nor is the franchise fee such a distortion of our rules that rectification through renegotiation prior to March 31, 1977, is required. Consequently, it appears that the franchise meets the substantial compliance test, and that the public interest would not be served by requiring Big Valley to renegotiate now with the franchisor. E.g. *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10. Big Valley's application adequately explains how it will meet the requirement for availability and administration of access and other nonbroadcast cable services. E.g. *Viking Media Corporation*, FCC 72–875, 37 FCC 2d 605, 606. With regard to the program and syndicated exclusivity requirements of Section 76.93 and 76.151 of the Rules, all cable systems are expected to comply with these requirements; however, the certificating process does not contain any requirement that cable systems affirmatively agree to comply with these rules. Further, Big Valley's reply indicates that it intends to comply with all Commission regulations and we expect Big Valley to do so.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Application For Certification" (CAC–278) filed April 28, 1972, by Big Valley Cablevision, Inc., IS GRANTED, and an appropriate certificate of compliance will be issued.

IT IS FURTHER ORDERED, That the "Objection Of Great Western Broadcasting Corp. Pursuant To Section 76.17" filed June 12, 1972, by Great Western Broadcasting Corp., licensee of Television Broadcast Station KXTV, Sacramento, California, IS DENIED.

IT IS FURTHER ORDERED, That the "Objections To Carriage and Request For Special Relief" filed June 12, 1972, by Central California Educational Television, licensee of Television Broadcast Station KVIE, Sacramento, California, IS DENIED.

IT IS FURTHER ORDERED, That the "Partial Opposition To Application For Certification" filed July 12, 1972, by KLOC Broadcasting Co., licensee of Station KLOC–TV, Modesto, California, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-220

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 73 OF THE COMMISSION'S RULES, REGARDING AM STATION ASSIGNMENT STANDARDS AND THE RELATIONSHIP BETWEEN THE AM AND FM BROADCAST SERVICES	Docket No. 18651

REPORT AND ORDER

(Adopted February 21, 1973; Released February 28, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT; COMMISSIONER WILEY ISSUING A SEPARATE STATEMENT.

1. This matter concerns the adoption of new rules to govern the assignment of standard broadcast, or "AM" facilities, both new stations and major changes in existing facilities. The proceeding was begun by Notice of Proposed Rule Making and Memorandum Opinion and Order adopted September 4, 1969, FCC 69-960, 34 F.R. 14384 (September 13, 1969), 17 R.R. 2d 1524. Previously, in July 1968, a "freeze" had been imposed on the acceptance of applications for new AM stations and major changes, pending the formulation, proposal and adoption of rules to govern this service in the future.[1] Comments and reply comments in response to the Notice were filed until early April 1970.

I. CONSIDERATIONS UNDERLYING THE "FREEZE" AND NOTICE PROPOSAL

2. The 1968 "freeze" Report and Order expressed in substance the following considerations: since the adoption of new and somewhat more restrictive rules in 1964 (Docket 15084), applications have continued to flow in, and, while they do not present problems of degradation of existing service through interference (one of the important objectives of the Docket 15084 was to adopt rules under which such degradation would be minimized), stations authorized pursuant to these rules have been less than successful in improving AM service

[1] Report and Order adopted July 18, 1968, FCC 68-739, 33 F.R. 10343, 13 R.R. 2d 1667. The "freeze" applied to all new and major change applications except change applications required by circumstances beyond the applicant's control (e.g., inability to continue at its present transmitter site), applications which are mutually exclusive with AM renewal applications, applications necessary to comply with international commitments, and applications for Class IV power increases where new international agreements make them possible (the latter provision was relaxed somewhat in 1969 along with the Notice). The "freeze" has been waived in a few cases.

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generally in two important respects: reduction of "unserved area"[2] and provision of first local outlets in communities of significant size (while a majority of the stations being authorized as of mid 1968 were first stations, the size of places to which they were assigned was quite small, with a median population of 2,850). Also, since virtually all of the applications recently granted were for daytime-only facilities they do nothing to improve service at night, where the really substantial unserved area exists. The Report and Order stated that this situation necessitated a study to determine whether there is still a significant national need for new AM stations or for major changes in existing stations, except in underserved areas, whether the remaining frequency space should be conserved for developing areas or to eradicate "unserved area", whether any future allocation system should view AM and FM as a single aural service, and whether the traditional "demand" basis of AM assignments is an efficient use of spectrum space. Since a continuing flood of applications would frustrate the objectives of the forthcoming rule making, on these basic questions, the "freeze" was adopted.

3. The September 1969 Notice herein expressed these concepts in more concrete form. A quite restrictive rule was proposed, which would have prohibited the filing of applications for new stations unless the proposed operation would provide a first primary aural service to 25% of the area or population within the proposed primary service contour, and, if the application were for changed facilities, the area or population for which the station provided the only service would be increased. In determining the extent of present aural service, *signals from existing FM stations* of 1 mv/m or greater would be taken into account.[3] Also, a test of *FM channel availability* would be included with respect to applications for new AM stations or new nighttime facilities (though not for changes in facilities on the same frequency): the AM application would not be accepted if there is available in the community an FM channel which the applicant could use and achieve substantially the same coverage of unserved area. This would include unoccupied FM channels assigned to the community in the FM Table of Assignments (Section 73.202 of the Rules), unoccupied and available for use in the community because of assignment at a nearby community (Section 73.203(b), the "10-mile" or "15-mile" rule), or susceptible of assignment in a reasonably simple rule-making proceeding involving no other changes in the Table.[4]

4. It was recognized that these very restrictive tests would sharply curtail the flow of applications, and indeed, this was one of the ex-

[2] The term "unserved" where used herein means area or population not receiving AM primary service, daytime or nighttime as the case may be. The term "white area", used traditionally and in the Notice to express this concept, has been confusing at times, and therefore is not used herein, "unserved area" meaning the same thing. We are retaining the traditional term "gray" to refer to area or population receiving only one primary service, since the only other likely expression, "underserved", is not sufficiently precise.

[3] The proposed rule itself would not have included in this criterion service from noncommercial educational stations, although comments on this were invited. The 25% "unserved area" test would relate to daytime area where the AM application is for daytime facilities, either daytime or nighttime area where the application is for a new Class IV station, and otherwise to nighttime area.

[4] Thus, the criteria involving FM actually were two separate tests: the present existence of FM service, and the availability of an unoccupied FM channel. Some commenting parties confused the two, as discussed below.

press purposes of the proposal: to prevent the large-scale depletion of the limited AM spectrum space remaining until a more near optimum plan for utilizing it can be arrived at. It was emphasized (Notice, para. 29) that the proposed rules "are not necessarily those which will govern the acceptance of applications for new and increased AM facilities for the indefinite future", but their adoption would give the Commission time to evaluate the over-all picture of aural development and to stimulate FM, with a further look at these developments in a few years. Meantime, we would authorize only stations clearly designed to improve service substantially.

5. The Notice also emphasized certain other considerations, including the importance of stimulating FM development. It was stated that FM provides a superior service in a number of ways—fulltime as opposed to the daytime-only service contemplated by the great majority of AM applications, usually a wider and more reliable service than a nighttime AM operation will provide, a service otherwise technically superior, with stereo and SCA potential—as well as being cheaper for the Commission to authorize and, except as compared to Class IV stations, cheaper for applicants to design and construct (AM directional antennas are expensive to design, evaluate, build and "prove out"). The Notice also referred to the same consideration mentioned in the "freeze" Report and Order as to the relatively small contribution which current AM grants appear to be making to the improvement of aural service generally, nearly all of them representing daytime facilities with their inherent limitations, providing first or second local outlets in many cases but often only to very small communities (with most places of substantial size already having them). It was stated that while the provision of "first local outlets" is still of importance, "in our judgment it does not warrant, in itself, acceptance in the near future of applications providing no other substantial service benefit." (Notice, para. 31.) It was also pointed out that large-scale grant of applications for daytime-only facilities tends to preclude use of the channel and adjacent channels for *full-time* operations, which would bring service generally much more needed. With respect to increases in nighttime facilities—which have not up to now been subject to a "25% unserved area" test—it was stated that while these are sought on the ground that they are needed to cover expanding urban areas at night, often this is an excuse to propose facilities serving areas well removed from the station's city. (Notice, para. 19.)

6. The Notice also discussed certain subjects which the Commission hopes to explore in the course of its evaluation of the total AM picture. These included: (1) the possibility of requiring, in AM, a "preclusion showing", somewhat similar to that required with many petitions for additional FM assignments, showing what uses of the channel and adjacent channels would be precluded by the proposal, and what other assignment possibilities exist to meet such future needs and uses; and (2) the possible formulation of rules designed to cut down the tremendously burdensome and expensive work involved in the processing of AM applications, for example a rule to the effect that when one application providing certain service benefits has been accepted (e.g., one which would serve unserved area or provide a first

local outlet), no other conflicting application would be accepted unless it would provide at least as great benefits. The Notice also invited comments on some alternative approaches in various respects (Notice, para. 33(a) to (e)): attaching more importance to providing a second service as well as a first; possibly requiring service to only a smaller percentage of "unserved area"; provision of first or second local outlets as well as a first or second primary service; ways of avoiding intentionally inefficient proposals designed to meet the "25%" test simply by serving an unduly limited area; and possible exclusion of "distant" signals in determining whether an area is presently served, on the theory that service from a distant source, while it may be technically good, is not equal to a closer service in being meaningful to listeners.

II. A BRIEF HISTORY OF AM ALLOCATION RULES

7. Historically, and at present, except to the extent the "freeze" prevails, AM applications have been accepted and considered on a "demand" basis: an applicant chooses and proposes a particular community, frequency, power and directional or nondirectional mode of operation, and his application is evaluated on this basis. Assuming he is qualified in non-technical respects, and his application does not involve objectionable interference to other stations or receive objectionable interference to an extent prohibited by the rules, it is granted. In general, no consideration is given to other possible uses of the channel (or of adjacent channels) in the area, or to other possible frequencies, powers or directional modes which the applicant could employ and which might represent a more efficient allocation. This contrasts sharply with the approach used in assigning "commercial" FM and all television stations. In these services, channel assignments are listed in Tables of Assignments (Section 73.202 for FM and 73.606 for TV), one or more assignments being listed for these communities throughout the United States. An applicant must apply for one of these assignments, either for a station in the listed community or for an unlisted community within a short distance.[5] These assignments have been made, and must be used, on the basis of minimum mileage separations between stations on the same and adjacent channels (e.g., in "Zone I", the Northeast, 170 miles co-channel for VHF TV and 155 miles for UHF TV, 150 miles for Class B FM stations and 65 miles for Class A FM stations). These separations are based on the assumption that all stations operate with maximum facilities and, on that assumption and given interference ratios, are designed to afford stations a reasonably large interference-free coverage area. Directional antennas are not used in TV and FM as an assignment tool, although they are used by a number of stations to increase signal strength in certain directions and avoid wasting coverage in others (e.g., over water). The preengineered Tables of Assignments are de-

[5] In FM, a Class A channel may be used at an unlisted community within 10 miles of the listed community and a Class B/C channel at a community within 15 miles; the distance in television is 15 miles (Sections 73.203(b) and 73.607(b)).

signed both to provide for an adequate number of channels in each community and area, and a high degree of efficiency of channel usage.

8. This planned approach has two great advantages over the "demand" system: it permits the reservation of channels to meet anticipated future needs and developments rather than allowing immediate demand to determine the disposition of spectrum space; and, by assuming maximum facilities, it permits stations to increase their facilities in an orderly fashion even where they start modestly. In AM, by contrast, stations are often "squeezed in", the assignment being made possible only by a combination of minimum power and, sometimes, a rather elaborate directional antenna intended to minimize interference to other stations; this presents problems when the station later wishes to increase its facilities. On the other hand, the AM approach obviously has a great deal more flexibility, and probably permits assignments in more places than are possible under the other system.

9. *Changes adopted in 1964 for AM assignments.* Prior to 1964, AM assignments were made on the basis of "normally protected" contours; an applicant's proposal would be accepted and considered even if it involved some "objectionable interference", as defined in the Rules, to existing stations, and if that was the case, a hearing was normally required in which the service gains and the interference detriment could be weighed (Section 73.24(b) which still applies to applications which were filed before the adoption of the new rules). The rules (Section 73.28(d), adopted in 1954 to replace and modify the earlier engineering standards)[6], also provided a test to insure that an operation would either be a reasonably efficient one or one providing a significant service benefit: the so-called "10-percent rule", to the effect that a proposal must either provide interference-free service to at least 90% of the population within its normally protected contour, or, for nighttime operation, that the station must either be a first local nighttime AM outlet or provide a first primary service to 25% of the area within its interference-free contour.

10. Following a "freeze" adopted in May 1962, the Commission in 1963 proposed tighter rules to govern the consideration of new and increased AM facilities (Docket 15084). These were adopted pretty much as proposed, in July 1964. The chief changes involved were three: (1) the previous concept of a "normally protected contour", which could be invaded by a proposed new or increased operation if the gain would outweigh the loss, was replaced by a strict "go-no-go" principle, embodied in Section 73.37, making the application unacceptable if it would cause interference to other stations within their protected contours; (2) the test as to "interference received" was also made "go-no-go" and tightened somewhat as compared to the "10 percent rule" mentioned; a proposed station must not receive any interference within their protected contours, unless it was either a first local outlet (in a community outside an urbanized area, or of 25,000 or more population within an urbanized area), or would provide a first primary service to 25% of the area within the interference-free contour, in which case interference might be received up to the 1 mv/m

[6] This rule, also, still applies to applications on file before adoption of the 1964 rules.

contour; and (3) the 25% "unserved area" test was made an absolute condition to the acceptance of any application for new nighttime facilities (a new fulltime station or a daytimer seeking fulltime operation), though not for increases in such facilities.[7]

11. Probably the chief purpose of the 1964 rules was to prevent the deterioration of existing service through a series of grants of applications involving some interference to existing stations, each in itself small but cumulatively significant. As noted in the 1968 "freeze" Report and Order mentioned above, in this respect the new rules have been successful, although in other respects perhaps less so. The imposition of a "25% unserved area" requirement as an absolute criterion for new nighttime facilities was a recognition of the fact that any new nighttime operation is a source of interference to other co-channel stations over long distances, even though under the "R.S.S." method of computation, applying the "50% exclusion" rule, it may not be counted as objectionable interference.[8] Therefore, it was believed, rather than tighten the interference-computation rules to a point where virtually no additional facilities could be sought, it would be better to leave the computation rules as they are, and, instead, provide that, to justify the small incremental interference, a really substantial benefit be provided by the new proposal.

12. *The "clear channel freezes"*. Another aspect of recent AM history, referred to by a number of commenting parties, is the "freeze" on the 25 I–A and some other channels, which has existed in one form or another since 1946. Section 73.25(a) presently in effect imposes a "freeze" to these channels, which have the 25 dominant I–A stations, plus 12 authorized fulltime stations in the conterminous 48 states (10 II–A stations plus one at San Diego and one at Albuquerque), and 57 daytime-only or limited-time secondary stations, all authorized before 1946 (there are also some secondary stations in Alaska, Hawaii and Puerto Rico on these channels). Also partially "frozen", in order to protect future allocation possibilities on the I–A channels, are 26 other channels adjacent to I–A frequencies.[9]

13. The "II–A" assignments mentioned in the last paragraph represent the one departure, in the AM field, from the "demand" principle. They date from the Clear Channel decision of 1961 (in Docket 6741), in which the Commission "broke down" 13 of the I–A channels, to a limited extent, providing for one additional fulltime assignment on each. Two of these were existing stations in San Diego, Cal. and Anchorage, Alaska; 11 others were for new class II–A assignments specified in Section 73.21 of the Rules, to be used in a specified state or group of states (one in the Plains states and 10 in the West). All but one of these, the 890 kHz assignment in Utah, have now been authorized.

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[7] In 1968 this 25% test was modified to permit acceptance where a first primary service would be provided to 25% of the area *or population* to be served.

[8] See Section 73.182(o).

[9] These frequencies are specified in Section 1.569, adopted in 1962 following the clear channel decision. That section lists 33 frequencies, within 3 channels of a I–A channel. However, 7 of these have in effect been unfrozen now that all of the II–A assignments except that on 890 kH/s have been authorized. The extent to which the other 26 channels are "frozen" varies with the channel: on some the restraint is very small, but on some it is quite large (e.g. 630 kc/s, to protect the "higher power" potential of both the 640 and 650 kHz I–A stations).

14. It should also be noted that liberal assignment principles for Alaska were adopted at the time of the Notice herein; these have apparently worked well and no comments on the subject were filed in this proceeding. At the same time as the Notice, the "freeze" was also lifted to permit the filing of power increase applications by the few Class IV stations not now having maximum power; this is discussed below.

III. COMMENTS FILED IN THIS PROCEEDING

15. Some 94 parties filed formal comments herein (counting individually about a dozen parties joining in certain comments). There were also some informal letters received. (Commenting parties are listed in Appendix B hereto). Of the parties filing formally, nearly all opposed the Notice proposal partly or entirely; the closest to total support came from Clear Channel Broadcasting Service (CCBS), a group of 12 Class I–A licensees, as discussed below. There was particular opposition from licensees, engineers, and others, to the restrictions proposed on modifications of existing facilities (or "improvements").[10] Some parties, such as Association on Broadcasting Standards, Inc. (ABS, a full time station group) took the position that the tight restrictions proposed for *new stations* are justified, but not those on increases in facilities. More than half of the comments dealt entirely, or largely, with the proposed restrictions on improvements in facilities. To a large extent, some of these parties' objections have been met by a subsequent (1970) Commission pronouncement clarifying the type of modification applications which are considered "major" and "minor" changes (i.e., applications proposing only changes in transmitter location, or directional or non-directional mode of operation, are normally considered "minor"); but their argument still must be considered in connection with other types of modification which are definitely "major": increases in power, changes in frequency, and applications by daytime-only stations for nighttime facilities.[11] We do not attempt herein to discuss all of the comments individually; the following discussion will indicate the main lines of argument.

16. *Views of industry groups.* Six industry groups filed comments, including CCBS and ABS (mentioned above), National Association of Broadcasters (NAB), National Association of FM Broadcasters (NAFMB), Community Broadcasters Association (a group of Class IV stations), and the Association of Federal Communications Consulting Engineers (AFCCE). As indicated above, *CCBS* was the closest of all parties to supporting the Notice proposal entirely. It favored the proposed restrictions particularly as to new stations, as avoiding further over-crowding of the AM band and encouraging

[10] The term "improvement" in facilities is used herein, as it was by some of the commenting parties, to include all of the types of modification mentioned in the text, both "major" and "minor": changes in transmitter site, directional or non-directional mode of operation, power increases, changes in frequency, and new nighttime facilities for daytime stations. Another type of "change" mentioned by a few parties—change in station location (community of license)—falls into a different category, being in a sense an application for a new facilities.

[11] See Policy Statement Concerning Standard Broadcast Applications for Major and Minor Changes, FCC 70–260, F.C.C. 2d, 18 R.R. 2d 1763 (April 14, 1970).

FM, which, now that FM set circulation is large, should definitely be included in any "unserved area" determination and should be relied on to fill the need for additional stations. It is also urged that the Commission take steps to "clear" as many as 40 AM channels for higher-power Class I operations, or national and regional stations, by reallocating stations engaged primarily in local broadcasting to the FM band.[12] CCBS also asserts that the "25%" standard should be tightened to require that 25% of the *area and population* be "unserved", citing in this connection the case of some of the II–A stations authorized, which serve large areas but small populations having no other nighttime primary service. CCBS also opposed any idea that, in making "unserved area" determination, distant signals should be ignored; it asserted that any mileage test of this sort would be arbitrary and its Class I members feel obligated to, and do, render truly meaningful service to rural areas many miles away from their locations. CCBS also renews its oft-made plea for "higher power" for the I–A stations, at least on an experimental basis, urging that skywave service is really the only way to provide good AM service to the present "unserved areas" in substantial amount, and that the present 50 kw level is not sufficient to do so, in view of increasing man-made noise, interference from Latin American stations, and the poor selectivity of present transistor radios.

17. *ABS* agreed with the Notice's view as to the desirability of restricting new facilities to those substantially serving "unserved area", saying that in this respect an "unrestricted demand" system is not justifiable, since it inevitably leads to a concentration of stations in and around large cities where there is a high level of economic support (often in "suburban" communities because of the more or less automatic "307(b)" preference which such stations receive despite the many outside signals available, and even though such proposals often present problems as to whether they are really not for large-city stations in fact if not in name). Thus, any AM stations to be permitted from now on should provide service where it is needed. Thus, it supported generally, for new stations, the "25%" standard. On the other hand, ABS vigorously opposed the restriction proposed on *improvements in facilities*, asserting that this would prevent stations making changes necessary to adequately serve their rapidly growing metropolitan areas, and thus *improve the quality* of existing service (this point is discussed separately below). It is asserted that if such restrictions are adopted, AM broadcasting will sink into obsolescence.[13] ABS also raised certain specific points: (1) where existing FM service is to be considered in relation to "unserved area", probably it should be on the basis of such service to *100%* of the area instead of 75%; otherwise, some "unserved

[12] CCBS cites, in this connection, the views expressed in the 1964 Report on Radio Spectrum Utilization issued by the Joint Technical Advisory Committee (JTAC), to the effect that in view of the crowded condition of the AM band in the U.S. and elsewhere, it would be in the long-range public interest to move *local* broadcasting (as opposed to national and regional) to the FM band, which is better suited for it because it offers superior technical characteristics, more consistent coverage, and better interference protection.

[13] This type of argument was urged also by several other parties, to the effect that with both other communications media and AM in other nations developing rapidly, it is not appropriate to restrict improvements in U.S. AM service.

area" would still remain; (2) educational FM stations should be included in this determination, since they do render service; (3) including in the FM availability test "unassigned but assignable" channels may present serious administrative problems; (4) there should *not* be an exception for proposals competing with renewals, since (with other new facilities not available) this would simply encourage such activity and this is particularly bad since the new applicant could propose greater facilities whereas the existing station could not;[14] (5) any consideration of "across the board" power increases, urged by some other parties, is much too complex for consideration at this time (involving both international and domestic problems); and (6) any consideration of permitting assignments which would provide a *second* primary service, or a first or second *local* service, should be only on a waiver basis, or otherwise the whole purpose of the rule would be thwarted (it is pointed out that many, probably most, recent and pending new applications are for a first or second station in their communities. It was urged that no such blanket restrictions are justifiable and that increases should simply be subject to the usual "no interference" tests.

18. NAB's comments related entirely to the proposed restriction on facility improvements, which, it points out, in some parts of the country would completely "freeze" AM stations at their present levels (e.g., North Carolina, where all but a very small part of the state receives 1 mV/m or better FM service from existing FM stations). NAFMB,[15] as might be expected, supported the proposed inclusion of FM in the determination of what is "unserved area" and the concept that a new applicant should look first to FM, and in general treating that service as an integral part of a total aural service. It was asserted that both AM and FM are needed if the nation is to receive adequate radio service—AM for its extensive groundwave and skywave coverage potential—and that too many substandard AM operations have been authorized (because FM has lagged) and this has hurt the development of FM. In sum, NAFMB supported the proposal as to new stations, and urged us to proceed with the type of reallocation recommended by JTAC (footnote 12, above). On the other hand, in its reply comments it expressed opposition to the proposed restrictions on improvements in existing stations, urging that effective AM service is needed, to rapidly burgeoning urban areas. This, it was said, should be looked at on a case-by-case basis.

19. The *AFCCE* comments opposed the idea of an "unserved area" criterion, or, indeed, any restriction beyond the overlap standards (adopted in 1964) to prevent objectionable interference, which, it stated, have worked well. It was stated that channel usage is going to be largely determined by presently existing stations in any event, so that no additional restrictions at this point are warranted. It was asserted that demand should determine what is possible, and the real

[14] A number of existing licensees made one or both of these points in their comments, particularly the second.

[15] The NAFMB is composed of FM broadcasters, some independent and some also licensees of companion AM stations.

needs for radio service do not really relate to "unserved area."[16] It was also urged that FM should not be taken into account, for reasons discussed separately below; and AFCCE made some specific suggestions also mentioned below. The comments of the *Community Broadcasters Association* related entirely to the one-year limitation adopted in 1969 on the filing of applications by Class IV stations for power increases (only a few had not previously applied), urging that such a deadline should not be set.

20. *Other general comments.* A number of other comments generally opposing the proposal—which is claimed to represent a near-total "freeze"—were filed, which advanced among them in various forms the following views and ideas (some of which have been indicated above).[17]

21. *The great need for increased facilities.* It is urged that there is a tremendous general need to increase facilities (as noted, some of the arguments on this score, but not all, have been rendered moot by the 1970 pronouncement concerning major and minor changes). This is said to be true because of: (1) the great and rapid increase in the size of urban areas, which make more power or changed transmitter locations necessary to serve them and which will continue for a long time; (2) the unsuitability or future unavailability of present transmitter sites, because of the building up of surrounding areas (with reradiation problems), freeway construction or urban renewal, requiring relocation and, often, a power increase from the new location to continue to serve the whole urban area adequately; (3) increased man-made noise levels; (4) the need to correct antiquated directional arrays. Many parties also urge the need for nighttime service by daytime-only stations, which is discussed below in connection with three particular comments by such licensees.

22. *Nighttime interference levels have not increased and will not increase if new nighttime facilities are permitted.* One of the key concepts in the restrictions adopted by the Commission in 1964 on new nighttime authorizations was that any new nighttime operation is a source of additional interference to co-channel stations, even though—under the "50% exclusion" concept embodied in Section 73,182(o)—it does not increase the nighttime limit of any station enough to be cognizable under the rules as "objectionable interference." Many parties, particularly engineering, argued with this idea. It was asserted that while some interference is thus added, it is minuscule and insignificant. In this connection reference was made to a study sponsored by the NAB in 1962 (prepared by George Davis), concerning interference levels on certain channels in 1960 as compared to 1940. It was found

[16] AFCCE used as an example Ventura County, California, which has had a tremendous growth in recent years, with new cities of large size, but where the availability of AM facilities is sharply limited by the numerous Los Angeles stations. It was stated that, while these stations provide it with signals and thus it is not "unserved area", it is doubtful that they can do much to meet its particular needs, since the needs of that city itself are great enough.

[17] The comments chiefly dealt with in these paragraphs are those of McKenna and Wilkinson and Robert L. Booth, Esq. communications attorneys, and the following communications engineering firms; Ralph J. Bitzer, Jules Cohen and Associates, Cohen & Dipell, Commercial Radio Equipment Co., Peter J. Gureckis (John Mullaney & Associates), Vir James, Jansky and Bailey, L. J. du Treil, Robert L. Jones, George Lohnes (Lohnes & Culver), E. Harold Munn, Silliman, Moffatt & Kowalski, Carl Smith, A. Earl Cullum & Associates, and J. G. Rountree.

in the study that, despite a tremendously increased number of stations and virtual elimination of "unserved" and "gray" daytime area in the Southeast, the nighttime limits of many stations on these channels had increased little or none, and in some cases had been reduced as stations directionalized their nighttime operations.[18] Attention was also called to the *KWK* (St. Louis) situation, where, when that license was not renewed and multiple new applicants competed for the frequency, the result was a substantial improvement in the service areas of 9 co-channel stations. Some of the parties urging this point claimed that the impression of increased nighttime interference is basically a subjective, psychological one resulting from two factors: (1) with the movement to the suburbs, a listener may well now live outside of his local station's interference-free nighttime contour, and thus experience interference, whereas if he had remained in his earlier in-city location he would find no more now than formerly; and (2) tuning across the band at night today, the listener may encounter many fairly new stations, with high interference limits, in places on the dial where 30 years ago there was only silence; but the stations which were there then can still be received just as well.

23. On this basis, a number of parties urged not only that no restrictions be imposed here on nighttime authorizations, but that the "25% unserved area" criterion adopted in 1964 for new nighttime operations be abandoned. It was claimed that this, not any reluctance of parties to establish new nighttime facilities, is the reason why very few such proposals have been advanced in recent years; correspondingly, if the restriction were removed, needed expansion of nighttime service would result. It was also asserted that this restriction is undesirable in presenting a choice of nighttime local services and attainment of competitive equality.

24. *Emphasizing "unserved area" at the expense of other needs.* Many parties urged that the emphasis on "unserved area" embodied in the Notice is both useless and wrong, pursuing an impossible objective at the expense of other needs for increased service. It was urged that: (1) there simply is not and will not be economic support in these areas for stations in any number sufficient to make a substantial dent in the "unserved area" (day or night); (2) the granting of new or increased facilities in other parts of the country, at least daytime, will not generally have any significant preclusionary effect on later facilities serving "unserved area" if and when there is any demand for them (or, at least, that this could be handled on a case-by-case basis by way of a "preclusion study"); (3) the most likely way to serve some of this "unserved area" is permitting increased facilities for existing stations, which would also tremendously improve their coverage of their own urban areas; (4) this emphasis, which includes "service" from distant sources, ignores the tremendous need for and importance of *local service*, a key objective of the Commission for many years under Section 307(b) of the Communications Act; (5) it also ignores the im-

[18] In the same inquiry, NBC made a study of the 1941 and 1962 limits of three Washington, D.C. stations, including its own WRC, computed by the 50 percent RSS exclusion method. It showed two as declining (2.8 to 2.6 mV/m and 2.6 to 2.3 mV/m) and WRC increasing, 3.5 to 3.6 mV/m. NBC also carried the analysis of WRC's limits out on the basis of 10% exclusion and found limits of 4.3 mV/m in 1941 and 4.7 mV/m in 1962.

portance of a *choice of service*—at least two, and likely more—and thus tends to preserve monopoly and diminish competition, for example, in a number of cities of over 25,000 population (outside of urban areas) having only one station; (6) there are other pressing needs much more likely of fulfillment, including that for adequate coverage of burgeoning urban areas and shifting populations, for local outlets in "new towns" such as Columbia, Maryland (projected to have a population of over 100,000 by 1980), outlets for minority groups, and greater service generally to fulfill the specialized, localized role of modern radio.[19]

25. *The significance of FM.* While NAFMB and a few other parties supported the Notice's treatment of FM, many parties vigorously opposed it. Their arguments included the following: (1) it is essentially immoral to create an "artificial shortage" in AM just to stimulate FM; rather, the people of the area involved, and applicants proposing to serve them, should have a choice as to which they wish to use; (2) FM does not need any stimulation, shown by the great increase in stations between 1962 and 1969 (nearly 60%) and the occupancy of all or nearly all channels in much of the country including areas around large cities; (3) FM is still not the equivalent of AM in ability to serve the public, in view of limited set circulation and particularly the absence of FM sets in automobiles during highly important "drive time"; (4) terrain problems in rough or mountainous areas which seriously limit FM service range in some cases; (5) the very limited extent to which FM channels are in fact available, in much of the country, for a potential applicant to use; (6) the utter impossibility of establishing a viable FM station in some parts of the country where it has not developed at all outside of large centers (e.g., Wyoming, with the only stations those in Casper and Cheyenne, and northern Maine); (7) FM is *not* cheaper than AM as the Notice claimed, but in fact AM is less expensive even if it involves a simple directional array (parties gave various figures in this connection). It was urged that—with only 25% of assigned channels vacant as of the end of 1969, and only 13% east of the Mississippi—telling potential applicants to "look to FM" is largely illusory, and, also, that any concept of using "unassigned but assignable" channels in this connection is an administrative impossibility and grossly unfair to applicants, in view of the delays and problems involved in FM rule making; (8) FM and AM are and should be treated as *complementary*, each being used where it best serves.

26. *Whether there is an "AM shortage".* Many parties argued with the concept that there is in fact any shortage of AM spectrum space, as the Notice indicated. It was claimed that, in much of the country away from urban centers, this is not true even under present assignment policies, and it is certainly not true in view of the potential for further assignments if and when the various clear channel "freezes" are lifted. For example, it is said, the 25 Class I–A channels represent nearly 25% of AM spectrum space, which could be made available

[19] It was pointed out that rather recently (1968) the Commission found the city of Elizabeth, N.J. to be sufficiently needful of local service, despite the plethora of New York City signals, to warrant a local outlet as compared to a more distant community.

for daytime, if not full time, stations; and the same is true of adjacent channels which are likewise partially "frozen" under Section 1.569, and to some extent other channels (I–B frequencies) which were unfrozen earlier only to have the general 1962 "freeze" quickly superimposed on them. In any event, it was urged, this reservoir makes it inappropriate to impose a freeze such as that involved in the Notice proposal. Rather, it was said, AM is really as available as FM, if not more so, and therefore a concept of looking to FM in order to avoid depletion of AM is basically fallacious.

27. *The Commission's role and obligation.* A number of parties claimed that the Notice proposal, and sharp restrictions involved, really reflected the Commission's effort to further "administrative convenience" by simply choking off applications. It was asserted that, while there are problems in AM processing and determination, they certainly do not warrant this approach, but, rather, efforts to deal with them as such. Some suggestions made are set forth below. It was also claimed (e.g., in the McKenna and Wilkinson comments) that these are largely of the Commission's own making, in the context of some Court decisions such as *Ashbacker* and *KOA*, which have imposed substantial requirements.[20] For example, it was argued that the Commission for a long time made substandard, interference-causing AM grants as a matter of policy, and existing stations, realizing this, asserted their KOA hearing rights in every case even where the interference was minuscule, lest the grant become a precedent and also because the Commission's consideration did not take into account the cumulative effect of such impingements on a given existing station. Also, some parties urged that the assertedly erratic treatment of AM over the years—"freezes", thaws, and then "re-freezes"—created uncertainty and a pent-up demand, which resulted in the filing of numerous applications involving "chain reaction" conflicts, particularly when certain frequencies were unfrozen. In general, it was urged that the Commission cannot properly use these considerations as ground to support the near-total "freeze" contemplated by the Notice, but must do the best it can to improve its procedures and seek the necessary additional staff to handle applications which reflect a genuine demand and therefore, in general, applications which reflect a genuine demand and therefore, in general, a need. In this connection, two other points were also urged: (1) while the Notice spoke generally of the proposal as an interim measure pending further in-depth study, there was nothing specific as to what would be studied or when, so that it must be assumed the near-total freeze would last indefinitely; (2) some parties accused the Commission of having in mind, without saying so, a form of "birth control", an idea that a given community or area simply does not need, or cannot well support, any more stations than it now has.

28. "*Foreign preemption*". A number of parties, particularly engineers, urged that any restrictions on U.S. AM assignments—beyond

[20] *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945); *FCC* v. *National Broadcasting Company* (KOA), 319 U.S. 239 (1943). The former established the right of copending mutually exclusive applicants to a full hearing against each other; the latter established the right of a station, which would receive objectionable interference, to a hearing on that issue.

those necessary to avoid interference—are undesirable because foreign nations on the continent are not bound by such restrictions and will make use of the frequencies in places near the border, to the exclusion of any later U.S. use. It was also claimed that when the foreign use is nighttime, as it often will be, this means additional interference to U.S. stations even though it is not cognizable under the international R.S.S. rules just as it would not be domestically. This argument was one urged for repeal of the "25% unserved area" criterion for new nighttime assignments adopted in 1964.

29. *Use of preclusion studies.* One of the matters mentioned in the Notice—not as part of the present proposal but for possible ultimate use—was a requirement of a "preclusion study", from which it could be determined what the impact from a given application proposal would be on other possible uses of the channel and adjacent channels in the general area, and what other assignment possibilities remain to meet the needs in the "preclusion area". Such a study is now required in connection with many petitions for FM rule making.

30. Some parties, e.g., Silliman, Moffat and Kowalski, supported this as a useful and feasible concept; as mentioned above, some parties suggested it as a method of "case by case" evaluation, for example showing whether or not a proposed use would preclude an assignment which would serve "unserved area". On the other hand, at least one party (Booth) opposed it as unworkable, in view of the tremendous differences which exist in AM propagation (ground conductivity and frequency) and the many variables involved in possible directional operation.

31. *The "demand" system.* Many commenting parties praised the traditional "demand" system of AM assignments, as the basis of the country's unparalleled AM system (with its tremendous number of stations and local outlets), and urged that it be continued, although perhaps with some modifications to encourage service to "unserved areas". On the other hand, others (e.g., McKenna and Wilkinson) urged that this system be considerably modified or abandoned, for example with a Table of Assignments containing initially existing stations, with additions thereto as a result of rule making, just as in the FM and TV service.

32. *The concept of "waste".* It was said by some parties that the whole idea that AM spectrum is "wasted" by grants on a "demand" basis is basically wrong, for one reason because spectrum, while very much a valuable and scarce national asset, is not a "wasting" one in the sense that minerals or petroleum are. It was asserted that later shifts in station location or facilities—either voluntarily or through Commission "show cause" proceedings—are always possible. Therefore, it was said, the "waste" involved is in *not permitting use of the frequencies now.*

33. *Comments urging the importance of nighttime AM service.* A number of parties, many of them licensees of daytime-only stations, urged the importance of their being able to obtain nighttime facilities to better serve their communities and surrounding areas.[21] Three com-

[21] At least one station whose licensee made this argument, WPVL, Painesville, Ohio, has since applied for and received grant of nighttime facilities.

ments illustrate some aspects of these suggestions and possible approaches. *Sea Broadcasting Corporation* is the licensee of Station WVAB, the only station licensed to Virginia Beach, Virginia, a city which is one of the four large cities making up the Norfolk-Portsmouth Standard Metropolitan Statistical Area (SMSA), and had a 1970 Census population of 172,106. WVAB is daytime-only, and the licensee urged that there is a great need for a local nighttime facility to meet the substantial particular needs of Virginia Beach, including matters such as elections, weather and school closings, local emergencies, discussion of public issues, and provision of time for local advertisers and political candidates. It was asserted that the only full-time station generally received throughout this city, WTAR, Norfolk, simply does not meet these needs because it has 16 major communities to serve and, for example, mentioned Virginia Beach material only four times in a week of evening news programs (three of them on one evening about the same item). It was claimed that, while Virginia Beach is part of an SMSA with a larger city, the Commission should adhere to the policy applied in *Monroeville Broadcasting Company*, 12 FCC 2d 359 (1968), where it recognized the need of Monroeville, Pennsylvania, for an outlet despite a plethora of primary service from nearby Pittsburgh stations, finding that none of the latter showed "an above average sensitivity to the needs" of the city of Monroeville. FM was claimed not to be the answer, at least as to *present* needs, in view of the still much greater circulation and universality of AM. The suggestion was that the Commission adopt a rule to the effect that when a "major political unit" of over 50,000 lacks a local AM nighttime service, the "25% unserved area" and other technical rules should not apply if it is shown that the proposed facility would not cause interference to other stations (under the traditional nighttime standards) and that the proposed station would serve nighttime a substantial part of the population within the political unit.[22]

34. Another aspect of such situations is presented in the comments filed by Gordon A. Rogers, President of Radio KGAR, the licensee of daytime-only Station KGAR at Vancouver, Washington. Vancouver, a city of about 43,000 in southwestern Washington, in the Portland, Oregon SMSA, has two other AM stations assigned, one full time (KISN), but, as Mr. Rogers pointed out, this station is actually located in Oregon (both studio and transmitter location) and has been the subject of Commission action because of improper identification as a Portland station (continuation of its operation is now the subject of a hearing proceeding, although not chiefly for this reason). Mr. Rogers claimed that this station really is designed to serve Portland and Oregon, and, in fact, does not serve Vancouver at all as a local outlet; and, that city and its county therefore do not have local nighttime service (no FM channel is assigned to Vancouver, nor, in view of its proximity to Portland, is such an assignment likely). Mr. Rogers vigorously opposed the Notice proposal, as stifling AM development, instead urging that daytimers should be permitted to "go nighttime" if they can

[22] The latter part of the proposal apparently represents the fact that a nighttime facility would not include all of Virginia Beach—which has a very large area—within its interference-free contour. Sea proposed that the Commission make this "substantial" determination on a case-by-case basis.

meet the traditional non-interference tests. It was pointed out that with Station KOIN-FM, Portland, having a very large 1 mV/m coverage area, if FM service is taken into account as a bar to AM improvement, this would preclude AM facilities in an extremely large area in Oregon and Washington. If this is going to be the case, it was urged that KOIN should be required to give its AM facility to KGAR and take the present KGAR frequency, which has less coverage potential but would still leave KOIN with its wide-coverage FM and television facilities. It was urged that no "unserved area" test is appropriate in such cases.

35. The comments of *Tri-State Broadcasting Company*, licensee of of daytime Station WGTA, Summerville, Georgia, present another type of situation. Summerville is the county seat of Chattooga County, with populations of about 5,000 and 20,000 respectively, and WGTA is the only station in the county. No FM channel is assigned in the city or county, nor, in all probability, could an assignment be made. The only nighttime AM service in the area is from Class I Station WSB, Atlanta, which puts a 0.5 mV/m signal, but not a 2 mV/v signal into Summerville and thus provides primary service to the surrounding area but not to the city itself. Two Chattanooga FM stations provide predicted 1 mV/m signals to the city and area; but it is claimed that these do not in fact provide adequate service because of rough terrain (they are respectively 32 and 44 miles distant). There is no local daily newspaper. Tri-State urged the great need of this area for local nighttime service (particularly in view of the large "three shift" work force which travels to and from work during nighttime hours), and, also, and in particular, the economic impossibility of building a directional array which would enable it to meet interference protection requirements at night with the normally permissible power level of 500 watts (regional channels). It was asserted that this (including the acquisition of a large enough site) would cost over $115,000, which is simply not justifiable in a community of this size. Therefore, Tri-State's basic request is for a rule *which would permit it to operate non-directionally with less than the minimum power*, or 100.5 watts, which it could use and not raise the interference limit of co-channel stations. So operating, with a 9.73 mV/m limit to it (a radius of about 4 miles), it would provide a primary service to some 8,221 persons, of whom 4,706 now receive no nighttime AM primary service and 3,472 receive only one, and would thus meet the "25% unserved area" test as modified in 1968 to include a 25% population criterion. It asked for a rule which would permit non-directional operation with sub-minimum power at night if the applicant shows that a directional array necessary to meet protection requirements with the regular minimum power would be either impossibly complex or economically unfeasible. It was urged that this approach would solve the problem of providing local nighttime service in many U.S. communities.

36. *The "minority group" problem: comments of Dr. Wendell Cox.* The comments of Dr. Wendell Cox, D.D.S., a principal in, and general manager of black-owned full-time AM Station WCHB, Inkster, Michigan, and FM Station WCHD, Detroit, related to the possible acquisition of broadcasting facilities by "minority groups"—blacks

in his case—pointing out that while there are some 700 stations presenting at least some programming aimed at the black audience, there are very few black-owned stations (they include the stations mentioned, and assertedly only about seven other AM and fewer other FM stations; but the number has increased somewhat since these comments were filed in November 1969). Dr. Cox urged that rules not be adopted which would restrict the opportunity for ethnic and racial minorities to compete for additional facilities in markets where they constitute large portions of the population. He asserted that—with the disadvantaged position of the black population during the period when facilities in large markets were available, and the present impossibility of adding any new ones in most large cities—steps should be taken to make more frequencies available to such groups, rather than adopting further restrictions of the type contemplated by the Notice. It was asserted that, while "militant" groups have approached this problem by renewal challenges, it should not be necessary to take something away from an existing licensee in order to achieve a minority voice, if there are other ways by which such groups can obtain *new* facilities. A re-shuffle of frequencies in places such as New York, it was claimed, could provide an additional channel which minority groups could seek.[23] Dr. Cox claimed that FM is not a substitute in this respect; Black taxi drivers, filling station workers, etc., are "transistor oriented" and FM sets are less available to poor black homes. Therefore, as shown by his experience with the Detroit FM station, the potential black FM audience at this time is small, even if FM channels were available in large cities, which they usually are not (and existing FM licensees, it was asserted, put prices on their existing FM stations which make purchase out of the question even for a fairly successful black group). Specifically, Dr. Cox opposed the Notice proposal, urged that the Commission take steps (by re-shuffling channels) to provide at least one frequency in major markets where there is now not a black-owned or controlled station, and stated that he is not asking that channels be available *only* for black applicants, but that they be given an opportunity to *compete* for them.

37. *Suggestions advanced by the parties.* Besides general opposition to the restrictive aspects of the Notice proposal, a number of parties advanced affirmative suggestions which they claim will improve aural broadcast service and the assignment process. Some of these—including the general elimination of the "25% unserved area" requirement for new nighttime facilities, possible use of "preclusions studies" as a basic allocation tool, the specific suggestions of the Virginia Beach and Summerville, Georgia, applicants for getting nighttime facilities in their particular situations, and the suggestions of Dr. Cox concerning a voice for minority groups—have been mentioned. Others are discussed in the next few paragraphs. Some of these ideas are clearly beyond the scope of this proceeding; others could conceivably be adopted herein but in our view should be the subject of more explora-

[23] These comments were accompanied by an engineering statement of E. Harold Munn, Jr., to the same effect as part of his separate engineering comments, including data as to channel spacing and the date of authorization of stations in large cities.

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tion if they are to be considered at all; and still others, such as those relating to processing and procedures, do not require rule making.

38. *"Across the board" power increase.* The engineering firm of Cohen and Dippel—supported by a number of parties, particularly Class IV licensees seeking increased nighttime power—proposed an "across the board" power increase for all classes of stations. The proposal was that: (1) Class I stations could increase from 50 to 250 kw, with I–A stations directionalizing (on the "broken down" I–A channels) to protect II–A stations; and I–B stations similarly protecting co-channel I–B stations where there are any; (2) Class II stations to be permitted 100 kw, with full-time Class II stations on I–B channels to protect the new 1 mV/m 50% contour of co-channel I–B stations (which is farther out than the present 0.5 mV/m 50% contour), and Class II–A stations protecting Class I–A stations on the present 0.5 mV/m 50% basis; (3) regional (Class III) stations to be permitted 25 kw (the Munn Engineering comments suggested consideration of an increase to 50 kw); and (4) Class IV stations to go to 500 watts at night with a 5/8 (0.625) wave length antenna. The latter is designed to reduce high-angle radiation, the chief source of interference to other stations within 300 miles. Studies on Class IV situations in Illinois and Tennessee, said to be typical, showed increases in interference limits of 35% and 12%, respectively, but increases in groundwave field intensity of 116% and 100%, resulting in a considerable net gain in service areas. In connection with the Class I power increase also, it was asserted that this would result in over-all improvement, improving both groundwave and skywave coverage despite increased interference. It was recognized that these changes might involve some adjacent problems in some cases, and also would often require modification of international agreements. ABS, in reply comments, urged that such changes would be very complex and should not be undertaken at the present stage of this proceeding.

39. *Treatment of I–A and adjacent channels.* A number of engineering, and other parties, suggested that the Commission take steps to make additional assignments (daytime if not full-time) on I–A channels, and wholly, or partly, lift the "freeze" on use of adjacent channels presently contained in Section 1.569. On the other hand, CCBS, urging the importance of skywave service from unduplicated I–A stations, asked that steps be taken to "clear" a number of additional channels for wide-coverage operation, by moving to the FM band stations designed primarily for local coverage.

40. *Use of a Table of AM Assignments.* Some parties, such as McKenna and Wilkinson and Ralph Bitzer, supported the idea of a Table of Assignments for AM, which would contain initially only existing stations, with additional assignments requiring amendment of the Table through rule making.

41. *Suggestions concerning procedures and processing.* Other suggestions related to the Commission's procedures and methods used in handling and consideration of applications, in an effort to deal with the problems mentioned in the Notice without the Draconian measure of a near-total "freeze". These included:

(a) *Relying on licensees to check for interference.* The AFCCE specifically, and other parties more generally, suggested that the Commission abandon the system whereby every AM application is carefully checked as to interference to existing stations, and instead, rely on the existing stations themselves for this, with the Commission staff initially only spot-checking and examining applications only where international considerations are involved. The AFCCE's suggestion was that a system (using only clerical personnel and a computer) be worked out for notifying existing stations on a monthly basis of all applications for facilities on their channels or up to 30 kHz removed, with the licensee to have the burden of objecting if interference to it would be involved. The licensee would have 60 days to file objections, with a complete engineering showing, and if objection is filed, the applicant and other parties would have 45 days to reply. The staff and the Commission would then consider the matter. If no objection is received and the application appears otherwise in order, it would automatically be granted.

(b) *Filings only by professional engineers.* The AFCCE and other engineering parties urged that applications be required to be prepared by professional engineers, as a way of insuring engineering showings of good quality, accuracy and completeness. It was said that this requirement—under which persons of "proven ethics and expertise" would be putting their reputations "on the line"—would go far to cut down the staff and Commission problems in dealing with inferior engineering submissions. In this respect, these parties make the same arguments urged by the AFCCE in a pending petition to adopt this requirement for all of the Commission's processes which involve engineering.

(c) *Furnishing an extract of material in the application.* McKenna and Wilkinson, noting that one of the time-consuming aspects of application processing is the preparation of memoranda setting forth the important facts as to an application—not only engineering but finances, ownership, programming, etc.—suggested that applicants be required to file with their applications an extract of key information in these categories, which would shorten the time involved in presenting items for consideration at higher staff level or by the Commission.

(d) *Increased filing fees.* Silliman, Moffat and Kowalski suggested that application filing fees might well be raised, to cover the substantial costs of AM application processing if it is to be continued on its traditional basis (as the parties generally believe it should). In 1970, of course, the Commission raised its fees, for AM and other applications, substantially compared to what they were when these comments were filed, and further increases are currently under consideration.

(e) *Use of computers.* A number of parties suggested that the Commission should make more use of computers in AM processing. The Silliman comments suggested the accumulation of information concerning AM stations in a "computer bank", which would be available to the public and also supported, at least in part, by public users.

42. *Suggested broadening of the proceeding.* Some parties, notably E. Harold Munn, Jr., urged that the scope of the proceeding should be broadened by a Notice of Inquiry and Further Notice of Proposed Rule

Making. Munn suggested that such a document might well look toward the following, in addition to further breakdown of the I–A channels already discussed:

(a) "Show cause" orders to daytime-only licensees as to why they should not be required to install nighttime facilities, in cases where it appears that they feasibly could and particularly where FM channels are not available;

(b) Steps to meet the needs of minority groups for increased ownership of facilities.

(c) Moving I–A stations out of the large cities, where they are now located, to smaller places where they could do a much better job of serving "unserved area", replacing them in the large centers by Class II or III stations.

(d) "Show Cause" orders to full-time stations which cause high nighttime limits to stations in "unserved area" portions of the country, as to why they should not be required to improve their arrays so as to reduce interference to these stations.

(e) Setting a time limit for resolution of the Clear Channel proceeding.

43. *Other suggestions.* Other suggestions made included the formation of a Joint Government-Industry Committee to undertake a sweeping evaluation and reform of the aural broadcasting assignment structure; that the Commission urge adoption of "all channel" AM–FM receiver legislation as really the only effective way of bringing these two aural services to parity; and various fundamental changes in AM and FM technical rules (suggested in the Booth Comments).[24]

IV. THE DISTRIBUTION OF AM AND FM SERVICE AND FACILITIES IN THE CONTERMINOUS 48 STATES

44. For reasons discussed below, rather than the "rules pending further study" contemplated by the Notice herein, we have decided to adopt, instead, rules which are expected, with minor modifications, to govern the assignment of new and increased AM facilities for some time to come. Therefore, it is appropriate to examine the picture of aural broadcast service as it is today in the United States, both with respect to *reception* or the *availability* of a usable signal from a nearby or distant source, and as to *transmission*, the existence or absence of a *local* station, or full-time service or a choice of local service, in communities, or nearby communities. It is of course well settled that under Section 307(b) of the Communications Act, the Commission's mandate to provide for a "fair, efficient and equitable distribution of radio

[24] These included, in FM, reducing both the bandwidth (to 100 kHz) and the adjacent-channel requirements, and, in AM, deleting the allegedly obsolete "blanketing" and second and third adjacent channel separation requirements, and liberalising the rules concerning principal-city coverage; and exploration of "single sideband" AM operation.

We have not mentioned specifically herein the longest comments of all, those filed by Coastal Broadcasting Company, Inc., licensee of WBEA and WBEA–FM, Ellsworth, Maine. These largely were related to that party's pending petition for breakdown of the Class I–A channel 820 kHz to provide a new Class II–A assignment in Maine. They made the same point urged by others herein as to the inadequacy of FM as a substitute for additional FM development in places such as northern Maine, and of the alleged difficulty in getting coverage via FM comparable to that which a II–A station could provide.

service" includes both of these concepts, as do the various statements of Commission allocation principles such as the Sixth Report and Order (1952) in television, and the Notice of Proposed Rule Making in Docket 15084 (1963), the proceeding which led to the 1964 AM rules. The discussion below relates to the 48 conterminous States; we discuss later herein the situation in Alaska, Hawaii, Puerto Rico and the Virgin Islands, which present different considerations because of their distance from the rest of the nation.

A. AM and FM reception and service

45. *Daytime AM service.* With more than 4,200 stations in the 48 States, all operating daytime, daytime AM service in the nation is extremely widespread, and—except in the West and certain limited areas elsewhere—all but *very* small areas have at least one daytime primary service.[25] Daytime "gray" areas, which receive only one primary service, appear to be somewhat larger (especially in view of the extent, discussed below, to which many counties in the U.S. have only one station); but even here there is relatively little absence of a choice of service. As indicated in paragraph 22, above, the 1962 NAB-George Davis study showed that in the Southeast, by 1960, only 0.6% of that region's area had no primary service, and only 1.4% of the area was limited to one primary service.

46. *Nighttime primary service.* "Unserved areas", those without primary service, are substantially larger at night because of the high interference levels which prevail (limiting the service areas of those stations which operate at night). The tool usually used in evaluating this situation is a map originally prepared by CCBS in the 1940's for the Clear Channel proceeding and updated in January 1962 to reflect 1961 conditions (it is generally agreed that in over-all terms, nighttime "unserved area" has not been significantly changed since). This shows some 1,726,000 square miles, or over half of the land area of the conterminous 48 states, as without nighttime "Type B" groundwave service.[26] This area in 1961 contained some 25,106,000 people.[27] The amount of "gray" area, receiving only one primary service at night, is also substantial. The unserved area includes a considerable portion of the three Pacific Coast states, the bulk of the Mountain and western portion of the Plains states, and the bulk of the South and Southeast, Virginia and West Virginia, and northern New England as well as substantial portions of Michigan and Pennsylvania and parts of most other states. An important factor in the provision of service, in over-

[25] There are extensive "unserved areas" in the Plains and Mountain States (and the interior portions of some of the Pacific States), and smaller areas farther east, including northern New England, northern New York, upper Michigan and northern Minnesota, and possibly north central Pennsylvania. In the East and Southeast there are small interstitial unserved areas, particularly where ground conductivity is low.

[26] The "Type B" groundwave nighttime service shown on the CCBS map is roughly equivalent to primary service, representing more sophisticated concepts evolved during the clear channel proceeding, whose validity the Commission recognized but whose complexity was held to make it unsuitable for ordinary application processing.

[27] The "unserved area" actually increased slightly from 1957 to 1961, but the population declined slightly. In the portion of the pre-sunrise proceedings concerning the I–A channels (Dockets 17562 et al.), some of the Class II opponents of the I–A stations urged that the decline in population, despite an increase in area and the great population growth of the United States generally, meant that this largely rural "unserved area" was losing population so that providing it with nighttime service is a matter of smaller importance. See the Report and Order in Dockets 17562 et al., 18 FCC 2d 705, 715 (1969).

all area terms, is the wide primary services areas of the Class I clear channel stations, such as those at New York, Chicago, St. Louis, Cincinnati, Des Moines, Minneapolis, New Orleans, Forth Worth, and elsewhere.[28] One factor reinforcing this pattern, as elaborated below, is that the bulk of Class II and III full-time stations are also located in or near the large cities of the country (Class IV stations also operate full time and are much more widely distributed geographically, but they have very small nighttime coverage areas principally because of the very high interference levels which result from the great many co-channel stations).

47. *Skywave (secondary) service from Class I stations.* In order to offset these limitations on nighttime primary service, reliance is placed on the skywave, or secondary, service rendered at night by Class I stations (25 I–A and 33 I–B) assigned to operate with high power and afforded a high degree of protection so that they can provide this service. Skywave service is recognized as somewhat intermittent and subject to "fading"; but it is a useful way of providing at least a modicum of service to the large "unserved areas". This service is regarded as generally useful out to about the station's 0.5 mV/m 50% skywave contour, which for a nondirectional operation is 700 to 750 miles from its transmitter. All parts of the U.S. receive skywave service from these Class I stations, usually from several.

48. *FM service.* FM service, from more than 2,200 stations, is likewise widespread in most of the nation, generally excepting the areas mentioned above for daytime AM service. The FM coverage map published periodically by the NAB shows the U.S. as completely covered, except for very small areas, about as far west as the 98th meridian in the Plains states, and then largely a coverage void until the Pacific states are reached. However, this is based on coverage out to a station's 50 uV/m contour, which does not always represent reliable service and is not the basis of interference protection.[29] As mentioned in para. 18, above, the NAB introduced a map herein showing almost complete coverage of the State of North Carolina by 1 mV/m signals from existing North Carolina facilities. However, since North Carolina is and has long been a state of widespread FM development, this is not necessarily typical of all of the nation. The engineering comments prepared by Peter V. Gureckis contained a similar map of all of the U.S. east of the Mississippi (1 mV/m coverage of all existing stations and assuming use of unoccupied channels); it shows only a small number of "unserved areas", of which the only ones of real size are northern Maine, northern New York, upper Michigan, central West Virginia and western Virginia, and southwestern Florida. Nighttime FM is in general considerably more widespread than AM primary service. Limited FM set circulation still remains a problem, although this is improving except possibly in the important auto radio market (see the Notice herein, para. 5).

[28] One of the oft-mentioned aspects of this situation is that the bulk of the nighttime "unserved area" is in the West; but the bulk of the "unserved population" is in the East and Southeast.

[29] Section 73.315(b) states that a signal as low as 50 uV/m may provide service in rural areas. However, stations have never been protected against interference out to this contour; and in Commission proceedings the 1 mV/m contour is usually the signal-intensity contour considered. Applicants are required to show the location of the 1 mV/m and the 3.16 mV/m (principal-city signal) contours.

DISCUSSION AND DECISION

49. In deciding upon the nature of the rules to be adopted in this proceeding pursuant to our proposals herein, and in the light of the comments filed, we have explored in depth approaches which would be "fine-grained"—would take into detailed account the actual distribution of aural broadcast service over the country, and result in rules aimed at remedying service deficiencies, if not on a case-to-case basis, in a manner approximating it. However it soon appeared that the body of rules necessary to mount this kind of attack on the problem would be formidably complicated, and their implementation would impose a heavy administrative burden on the Commission and on licensees and applicants—all without any firm assurance that the result, as evidenced by a more equitable and efficient distribution of broadcast facilities, would be sufficiently significant to justify the attendant effort and expense.

50. Therefore, we have abandoned this approach, and are adopting comparatively simple rules in an attempt to accomplish our objective—to control the expansion of standard broadcast service in such a manner that, in the future, grants of new standard broadcast stations or changes in existing stations will be limited largely to those situations in which improvements in the existing level of aural service are clearly needed, and cannot readily be achieved by alternative means. In following this course of action, we are rejecting the suggestions of those parties who urge that we revert to an unrestricted "demand" system—that we accept and process any standard broadcast application which meets the basic technical standards, and abandon rules tailored to limit the addition of new stations to communities which we deem to have sufficient aural service. These parties tend to argue that the tremendous number of AM stations which have been assigned under this system is a demonstration of the excellence of the system, and that "demand" can be considered as a true indicator of the public need for additional broadcast service. We do not believe that effectiveness of a system of broadcast allocations can be measured solely or even primarily by the fact that it provides an open-ended avenue for the apparently unlimited expansion in the number of stations. As we have often observed, the unrestricted operation of such a system almost inevitably results in an inequitable distribution of facilities, with an undue concentration of stations in the larger communities. Nor do we believe that "demand", as evidenced by the willingness of entrepreneurs to hazard funds for the establishment or purchase of stations is a true reflector of the public need for additional broadcast service. Typically, any of the largest cities have a multitude of aural services, and it is difficult to conceive a substantial public requirement for any greater number, yet the "demand" remains, as demonstrated by the prices commanded by standard broadcast stations which change hands in those cities. Accordingly, we find no justification for jettisoning rules designed to direct the future growth of the standard broadcast service into areas where there is inadequate existing service by any reasonable standard.

51. The major rule amendments which we are adopting are embodied in a new paragraph, which, together with pertinent notes, would be added to present Section 73.37 of the rules. This paragraph sets forth requirements bearing on the acceptability of applications in addition to the no overlap and non-interference showings presently required by the rule. A discussion of the positions advanced by the parties to this proceeding, and our reasons for adopting these particular rules, can be conducted most fruitfully if we here set forth the new paragraph, and examine its provisions and their implications in the light of the considerations involved.

52. § 73.37(e) in addition to a demonstration of compliance with the requirements of paragraph (a), and, where appropriate, paragraphs (b), (c) and (d) of this section, an application for a new standard broadcast station, or for a major change (see § 1.571(a)(1)) in an authorized standard broadcast station, as a condition for its acceptance shall make satisfactory showings as indicated below for the kind of application submitted.

(1) Application for a new daytime station, or for a change in the frequency of an existing daytime station.

(i) That at least 25 percent of the area or population which would receive interference-free primary service from the proposed station does not receive such service from an authorized standard broadcast station or receive service from an authorized FM broadcast station with a signal strength of 1 mv/m, or greater, or

(ii) That no FM channel is available for use in the community designated in the application and that at least 20 percent of the area or population of the community receives less than two daytime aural services. For the purpose of this showing an aural service shall be deemed to be provided by an interference-free groundwave signal from an authorized standard broadcast station of a strength of 5 mv/m, or greater, or by an F (50, 50) signal from an authorized FM broadcast station of a strength of 70 dbu (3.16 mv/m), or greater.

(2) Application for a new unlimited time station, for a change in the frequency of an authorized unlimited time station, or for nighttime facilities by an authorized daytime station, a satisfactory showing under (i) (except for a Class IV station), and under either (ii) or (iii):

(i) That objectionable interference at night will not result to any authorized station, as determined pursuant to § 73.182(o).

(ii) That at least 25 percent of the area or population which would receive interference-free primary service at night from the proposed station does not receive such service from an authorized standard broadcast station, or service from an authorized FM broadcast station with a signal strength of 1 mv/m, or greater, or

(iii) That no FM channel is available for use in the community designated in the application, and at least 20 percent of the area or population of the community receives less than two nighttime aural services. For the purpose of this showing, an aural service shall be deemed to be provided by an interference-free groundwave signal from an authorized standard broadcast station with a strength of 5 mv/m, or

greater, or by an F (50, 50) signal from an authorized FM broadcast station with a strength of 70 dbu (3.16 mv/m), or greater.

(3) Application by an authorized station (other than a Class IV station) proposing changes in facilities, other than a change in frequency, must make a satisfactory showing, where appropriate, under (i), and under either (ii) or (iii).

(i) For a change in nighttime facilities, that the proposed change will not result in objectionable interference to other stations as determined pursuant to § 73.182(o).

(ii) For an increase in power, either daytime or nighttime, that the authorized operation, during the portion of the broadcast day for which power increase is sought, includes less than 80 percent of the area or population of the community to which the station is assigned within its 5 mv/m groundwave contour (or within its interference-free groundwave contour, if of a higher value), or,

(iii) For an increase in power, that at least 25 percent of the area or population which, as a result of the power increase, for the first time would receive interference-free primary service from the station, is without primary service from any other standard broadcast station.

New notes appended to Section 73.37 define the circumstances controlling the availability of an FM channel, and, with respect to the determination of existing services, stipulate that signals from stations located more than 50 miles from the community for which the station is proposed will not be considered, and that co-owned FM and standard broadcast stations shall be considered as providing a single aural service. A study of the provisions of this paragraph will reveal the following additional criteria which will henceforth govern the acceptance of applications for standard broadcast stations:

(1) A showing, for a new daytime station that 25 percent of the area or population within its proposed service area is without primary service from any existing standard broadcast station, or comparable service from an FM broadcast station, and, for a new unlimited time station, that this condition exists during nighttime hours.

(2) An alternative showing that the community for which the new station is proposed receives from existing stations a degree of service which, for the purposes of this document will be referred to as "inadequate"—that the community is not substantially covered by at least two independent (not commonly owned) aural (AM or FM) services with field strengths of a level normally required to be provided by a station assigned to that community—and that an FM channel is not available to the community which might be utilized to rectify the service inadequacy. In the determination of the adequacy of existing service to the community for which the application is designed, we have further provided that signals from distant stations—that is, from stations whose transmitters are located more than fifty miles from the community—are not to be considered.

(3) Subject to the overlap and interference restrictions of 73.37 we will accept applications from existing stations for increased power within the limits permitted the class of station involved on a showing either that at least 25 percent of the newly served population or area would receive a first primary service, or that, with existing facilities,

the station does not adequately cover its community—inadequate coverage being presumed if less than 80% of the population or area of the community receives an interference-free signal of 5 mv/m or greater. For an unlimited time station, this test is applied separately nighttime and daytime, and an application for such a power increase based on inadequate community coverage is accepted only for the portion of the broadcast day during which inadequate coverage is shown.

53. The Commission has found in numerous cases that coverage of a community approximating 90% of its area or population with a signal of required strength is in substantial compliance with the service requirements of its rules. The 80% figure used herein as the minimum level for adequate coverage of its community by an existing station was chosen as a figure below which service can be deemed clearly inadequate, even in the light of existing Commission policy. For a similar reason, we have used the complement of this figure, 20 percent, as the criterion to be employed by the applicant for a new station in a demonstration of the area or population of a community unserved by existing stations.

54. It will be observed that, in the provision of aural service, we are treating FM as a full and viable partner of AM, in that we both accord existing FM service equal status with AM in the determination of whether a particular community is being "adequately" served, and, where service can be shown to be inadequate, that we point to FM as the favored means for correcting this deficiency.

55. We have given full consideration to the arguments filed in opposition to our proposal to accord a major role to FM in future endeavors to improve aural broadcast service, and have concluded that it is in the overall public interest that existing and potential FM service be relied on to the extent feasible. It is quite clear that, under the allocation practices prevailing heretofore, nighttime primary service from AM broadcast stations has not improved appreciably in areas where it is most needed, and, considering the nature of the problem, is unlikely to. FM is virtually the only means by which admittedly inadequate nighttime primary service may be improved substantially; in contrast to daytime stations, which have constituted the bulk of new standard broadcast stations authorized in the recent past each new FM station provides a new and significant nighttime service. The argument has been advanced that the typical FM station does not provide service over an area as extensive as that usually served during daytime hours by a standard broadcast station. This is certainly true if the areas within the respective 1 mv/m and 0.5 mv/m protected service contours of such stations are compared. However, we believe that this advantage of AM, as demonstrated in this manner, becomes of far less significance when service comparisons are made under actual operating conditions. At locations where the extent of service provided by the FM or an AM station is effectively limited to its protected contour by interference from other stations, there is usually a plethora of service from such stations, and wide area coverage by either station, in all probability, contributes little to the revenues received by the station or service needed by the public. In less densely populated areas, where stations are fewer

in number and more widely separated, the effective service areas of the FM and standard broadcast stations may approach comparability, since, as is widely recognized, in the absence of interference from other stations, an FM station will provide service roughly equivalent in quality to the 0.5 mv/m service from a standard broadcast station, out to its 50 uv/m contour.

56. Whether or not an FM station is less expensive to install than an AM station of comparable size (in our Notice, we asserted that this was the case, but several of the comments asserted this was not necessarily so, and offered typical cost data in support of this contention), the differential one way or another, does not appear so great as to influence our action in this matter. While it has been urged that there is still an insufficient number of sets capable of receiving FM signals in the hands of the public to make the AM and FM services fully comparable, we find that this situation is one that is rather rapidly being alleviated. For instance, EIA [30] shows for the year 1971 approximately 59 percent of all radios, other than those for automobiles, produced or imported, had FM capability. Admittedly, automobile radios which include FM constituted only about 19% of such radios produced or imported in 1971, but this percentage has risen from a figure of around 11% for the year 1968. Those opposing the adoption of rules according coequal status to FM have emphasized that an extremely important section of the aural market is the commuting public, and the small proportion of cars equipped to receive FM programs present a serious threat to the economic viability of FM stations. However, it should be noted that the rules which we are adopting generally favor the growth of stations in the smaller, and more isolated markets when existing aural service can be demonstrated to be less than adequate. In such markets extensive commuting to and from work may be expected to be relatively less important, both as to the number of persons involved and the average duration of the trip. It is urged that, in such markets, FM has had little previous acceptance, and, accordingly, the percentage of FM receivers in the hands of the general public is considerably lower than the national average. This seems essentially a "chicken and egg" proposition. Until FM service is available to these communities it is probably futile to expect that listeners will undertake to provide themselves with equipment for the reception of FM programs. The most potent impetus to the growth of the number of such receivers, is the existence of satisfactory service from FM stations. We do not believe, with the general availability of suitable receivers at reasonable prices, the fact that, in a particular instance, the radio audience has had no incentive to purchase such receivers is reason to refrain from supplying that incentive. At the present time, in excess of 2,300 FM stations are on the air, more than half the number of AM stations. This FM total, furthermore, does not include in excess of 500 non-commercial educational stations. Taking all of these factors into consideration, we are convinced that FM is ready and able to assume its full share of the burden for improving aural service to the Ameri-

[30] Consumer Electronics—1972 Annual Review—published by Consumer Electronics Group of the Electronic Industries Association.

can public. Our rules recognize this fact and assign to FM the role which it merits.

57. However, the amended rules provide that the determination of the adequacy of aural service to a community from existing stations be made without the inclusion of service which may be provided by noncommercial educational standard broadcast and FM stations. Our decision on this point has been arrived at with full recognition of the importance of the service rendered by such stations. Nevertheless, we have endeavored to tailor our rules so as to make possible the provision to each community of two "competing voices". These "competing voices" will be sources, not only of two program services, but, hopefully, will present two independent viewpoints on matters of community concern. Over 60% of the FM educational stations in the United States are Class D 10-watt stations operated by educational institutions, both at the college and secondary school levels. These stations are operated primarily for the benefit of the student body, their effective service area is very limited, and they very often are off the air during school vacation periods. Further, many of this class of stations serve primarily as training facilities to teach students the art and science of broadcasting. For these reasons, these stations are not truly voices in the community and should not be counted as such. Although other classes of educational FM stations may actually provide adequate signals to the communities to which they are licensed, they, like the Class D station, are exempted from many of the operating requirements imposed upon commercial stations. For example, educational stations have no minimum hours of operations; they are not required to provide their community of license with a minimum required field intensity; and they are not presently required to ascertain community needs and interests and provide programming to meet such ascertained needs and interests. With respect to noncommercial educational AM stations, their numbers are so small—less than 30 out of more than 4,000 AM stations—that as a practical matter, we believe that they should also be excluded from consideration. Accordingly, for the purposes herein, we will exclude such station from consideration in an assessment of existing aural service to the community. We do this with no intention of diminishing the value of educational broadcast service, which, where it exists, provides a desirable and unique bonus in available programming.

58. The rules provide that where a prospective applicant intends to rely on a demonstration that service to a community is inadequate, he must also show that no channel is available for a new FM station serving the community. A channel assigned to the community is considered unavailable if occupied by an authorized station, whether or not the station is in actual operation. If the channel is unoccupied, but applied for in that community, it is still "available", since, whatever applicant finally gains an authorization on the channel, the station will supply service to the community. A channel is also available if it is unoccupied, and can be used in the community pursuant to 73.203(b) of the FM rules (the 10–15 mile rule).

59. The FM Table is not "saturated" in the less populated areas, and we had considered the advisability, where no FM channel had been assigned to a community, or requiring, as a necessary condition for the acceptance of an application for an AM station in that community, a showing that it was not technically feasible to make such as assignment. However, we have decided that the complications involved in such a negative showing are not warranted, and we, accordingly, have determined upon the simpler formulation.

60. Also, it may be noted, we have not specified a preclusion showing in the acceptability criteria—that a station assigned to the proposed community will not preclude a more needed or more efficient assignment elsewhere. This kind of showing had been considered as particularly appropriate with respect to daytime stations, whose proliferation might limit opportunities for new unlimited time assignments, with their greater service potentiality. When we invited comments concerning the possible adoption of rules requiring such showings, we indicated we had rather strong reservations about their practicability, when considered with respect to AM allocations. While one or two of the parties who discussed this matter believed that preclusion studies might usefully be required, at least on a case-to-case basis, others opposed their employment under any circumstances. Upon further consideration of all facets of this matter, not only the many variables which affect AM signal propagation, but the kinds of decisions, both economic and engineering, which must be made concerning the use of directional antennas, decisions particularly within the purview of each applicant proposing such an antenna, we have concluded that such studies, while inevitably being complicated and costly, would still be unlikely, in most instances, to provide definitive "yes" or "no" answers to the preclusion question. Rather, the requirement for such showings would introduce a new element of uncertainty and complication in our application processing procedures which we can well do without.

61. As we proposed in our Notice in this proceeding we are requiring a showing of service to twenty-five percent unserved area or population as an application acceptability criterion for daytime proposals, and are retaining this requirement where nighttime operation is contemplated. This requirement represents an effort to channel new AM assignments to locations where each contributes materially toward the achievement of the first of the traditional service priorities—the provision of service to all of the U.S. population. While this remains a desirable aim, long experience has demonstrated that it cannot be fully achieved under a system of broadcasting where each station must be financially self-sustaining, and accordingly, must be located where population is sufficiently concentrated to provide the necessary support. Accordingly, we have offered an alternative test, applicable to both daytime and nighttime operation, which reflects our aim toward attainment of two other important priorities, the provision of first and a second locally oriented service to each community.

62. For present purposes, these priorities are observed in modified form, in that:

(1) The contributions of two aural services, AM and FM, are considered together in the satisfaction of these priorities.

(2) Existing aural services to a community, if they are of adequate strength and are provided by stations not too distant from the community, are considered to satisfy these priorities. Traditionally, the priorities have been applied with respect to stations which are assigned to the community.

63. We have already discussed our reasons for treating AM and FM as a single service in this context. Insofar as the second point is concerned, we have remarked that while the assignment of first and second stations to each community traditionally has been an important allocations objective, that many communities are very small, and the full achievement of this objective in the limited spectrum space available is not feasible. In recent years, we have placed considerable emphasis on the obligation of each station to tailor its programs to serve the needs of all substantial population segments in its service area. Thus, if a community is served with a 5 mv/m signal from a nearby AM station (or 3.16 mv/m signal from an FM station) it obviously receives a technically adequate service from that station, and, we believe, could expect that station to give adequate attention, in its programs, to the purely local concerns of the community.

64. In the determination of existing service to each community, however, we have provided that service from stations whose transmitter sites are more than fifty miles from the community be excluded, on the assumption that stations at such distances from the community could not reasonably be expected to devote a substantial part of their broadcasting time to the particular needs of the community. The choice of this distance, of course, has been, to some extent, arbitrary, but we believe it is a good compromise. As the distance of a station from a particular community increases, the likelihood that the station, as a practical matter, can give a substantial degree of attention to the specific needs of the community rapidly lessens. For instance, a station delivering a 5 mv/m signal at a distance of ten miles has a service area which is roughly $\frac{1}{25}$ of the service area of a station delivering a signal of comparable strength at 50 miles. The latter station obviously will have a very much greater number of separate communities within its service area, and would be much less able to concentrate on the needs of specific communities in that area, than would a station with more restricted service contours.

65. We were also concerned, in our aim to provide each community with two adequate aural services, that these services be "competing voices". Thus, for the purpose of the existing service determination, we have treated service rendered by commonly owned FM and AM stations as a single service. This is the only kind of common ownership situation which will be encountered in this connection, since in meeting the requirements of § 73.35 and § 73.240 of our rules, commonly owned AM stations or commonly owned FM stations would be so separated geographically that under no circumstances would the 5 mv/m contours (of AM stations) or the 70 dbu contours (of FM stations) encompass the same areas.

66. While we are adopting rules with respect to new daytime stations which are substantially more restrictive than the present rules, the rules for nighttime AM service, even though making the presence of availability of FM service as a new consideration, have been somewhat liberalized, since we have provided alternative tests for application acceptability which are the same as we have prescribed for daytime applications—rather than continuing to rely solely on a showing of proposed service to unserved area or population. In situations where FM is not available to a particular community, we are ready to accept an application contemplating a nighttime operation when it is shown that the proposed station is necessary to ensure that the community receives two adequate aural services at night, and it offers protection for other stations which our rules require. We believe a new nighttime assignment may be justified under such circumstances as an exception to a policy aimed at avoiding an undue proliferation of such assignments.

67. Some of those commenting hold that we are unduly concerned with the effect an existing service of adding new stations for operation after nightfall, and dispute our claim that each new assignment, regardless of the degree of protection offered pursuant to existing rules, imposes its modicum of interference, with some effective limitation to the service provided by existing stations. It is suggested that this, in fact, does not occur—that an older station continues to provide interference-free service to as large areas as in former years, but many of the listeners to this station are now in suburban areas, more remote from the station than previously. While they may find reception unsatisfactory, and ascribe this condition to a shrinkage in the interference-free service area of the stations, in reality their poorer reception results from the fact that they reside at more distant locations. This opinion is offered without supporting evidence, which admittedly could be developed only by a great many observations of a number of stations over a long period of time. Our own observation, offered similarly without technical support, has led us to a distinctly contrary conclusion—we believe that regional stations, in particular, despite computations made under existing rules which may demonstrate that limitations remain unchanged, have suffered a progressive deterioration in the extent of the areas over which they can provide interference-free service. If this conclusion is correct, there are at least two causes to which the effect might be ascribed—(1) that our methods of predicting interference do not fully take into account the cumulative effect of interference from many sources and (2) that the directional antennas used by most regional stations for restricting radiation toward other co-channel stations do not, in many cases, limit interference produced by skywave transmission to a degree which might be predicted from consideration of the antenna design. At least one study has been made tending to show that this can be the case—that directional antennas designed for a high degree of suppression of radiation at angles above the horizontal produce interfering skywave signals substantially exceeding those which would be predicted under the Commission's

rules.[31] This last consideration is particularly important in considering the addition of new nighttime services to already overcrowded regional channels. Stations "shoehorned" in under such conditions almost invariably require the use of directional antennas designed to radiate very little energy in various directions above the horizontal plane, so as to provide the degree of nominal protection for other stations required by the Commission's rules. If this protection is not, in fact, achieved, as it well may not be, the result is a higher level of interference to these stations than was anticipated.

68. For these reasons, and because, in general, such new stations, subject to interference from many other stations, have very limited interference-free service areas and contribute little to overall nighttime service, we will continue to restrict new nighttime assignments to those cases where they can provide clearly needed new service and there is no available alternative means for providing this service.

69. Because we recognize the problems faced by many existing stations in continuing to serve satisfactorily communities which, over the years, have expanded to geographic extent, the amended rules are framed so as to permit stations able to demonstrate that their existing community coverage is inadequate to increase power within the limits specified by our rules, subject to compliance with overlap and interference considerations. However, permissible power increases are selective—an unlimited time station will be permitted to increase power only during the portion of the broadcast day when existing community coverage is shown to be inadequate (or it can be shown that 25% of the area or population newly served as a result of the power increase would receive its first primary service). Of course, power increases permitted on such a selective basis may result in cases where some unlimited time stations are authorized to operate with higher power at night than during the daytime. While this result may be at variance to the usual situation, in which the station's daytime power is equal to or greater than its nighttime power, there appears little justification for permitting a power increase during a portion of the broadcast day for which the applicant is unable to make a satisfactory showing, pursuant to the rules, of service benefits resulting from the increase.

70. We have not adopted any rule provisions, as suggested by some of the parties, directed specifically toward making easier the acquisition of nighttime facilities by daytime stations. Indirectly, we believe we have done this, however, by upgrading the requirements for adequate service to each community from existing stations. Thus, if the licensee of a daytime station can demonstrate that no unused FM channel is available to his community, and that other stations fail to provide at least two "adequate" nighttime aural services to that community, he is eligible, if his proposal will meet the nighttime protection requirements for other stations, to apply for full time operation. However, he would not be permitted to tailor the proposed nighttime power, as Tri-State requests, to whatever level might be necessary to provide

[31] Suppression Performance of Directional Antenna Systems in the Standard Broadcast Band—FCC Office of Chief Engineer—TRR Report 1.2.7. This Report analyses the results of skywave measurements on directional arrays made in April, 1949, by NARBA Preparatory Committee IA.

protection, with non-directional operation, for other stations. An appealing case might be made for this kind of operation in an individual instance. However, the net effect of a rule relaxation permitting such operation would be a proliferation of many low cost, but substandard nighttime facilities, generally providing inadequate service to their communities, and contributing to a level of actual (as distinguished from computed) intereference far outweighing the service benefits which they might provide.

71. As indicated in our earlier discussion of these matters, proposals for an across-the-band power increase, and involving changes in the rules governing the use of the clear channels are beyond the scope of this proceeding. Any broadening of its coverage to include such questions could result in an extension of the "freeze" on the acceptance of applications into the distant future, a result which we believe is undesired by any of the parties. We have given full consideration to those suggestions aimed at mitigating the Commission's workload in the processing applications for standard broadcast stations, and may eventually test the feasibility of certain of the ideas presented. At the present, since we are unable to forecast accurately the degree to which application filings pursuant to the amended rules will present a major problem, we intend to proceed in this area as described in paragraph 77 of this Report and Order.

72. A petition for special consideration of minority groups presents not a requirement for more stations serving the special interests of these groups (on the contrary, it is claimed that approximately 700 stations carry at least some programming directed especially to the black audience), but seeks an opportunity for new stations which are black owned. This need is seen as especially great in the larger markets, where the greatest concentrations of minority groups are found; it is also in these markets, however, where new facilities are less likely to be available, both because the plethora of existing stations diminishes the possibility of technically feasible new assignments, and because the Commission's policies are generally aimed toward precluding further additions to the many broadcast services already provided such cities. It is urged, however, that, it is only recently that the blacks' financial and social position has advanced to a degree that broadcast station ownership has become possible—meanwhile, the available assignments in these population centers have been utilized. It is further stated that the purchase of existing facilities in these markets by black groups is either not possible, or involves prices so monumentally high as to be prohibitive. Accordingly, the only practical avenue through which black ownership of broadcast facilities can be accomplished is through allocation policies which make additional assignments possible.

73. Conceding the truth of all of these allegations, and that the promotion of minority group ownership of broadcast facilities is a socially desirable end, we are unable to see how this objective may be furthered effectively in a proceeding, such as this, and within the framework of the statutory scheme which circumscribes our actions. Obviously, should we modify and relax all non-technical rules which tend to restrict additional assignments, the opportunities in general for minority controlled applicants to seek new facilities may be in-

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creased, but at the expense of basic allocation objectives, and without any real assurance that these opportunities can or will be effectively exercised. In any event, the availability of new assignment opportunities in the larger cities, in which the largest minority groups reside, is not controlled by rules such as we now adopt, but by the basic technical standards. The petitioner demonstrates this in a study appended to his filing which shows in the "top ten" markets, nearly all of the existing standard broadcast stations were assigned in these markets prior to 1950, long before the Commission became actively concerned with the undue concentration of stations in the larger population centers, and adopted rules designed to direct the future growth of stations to areas where additional service is more greatly needed. Thus, absent a revision of the standards which now define the limits of service and interference, a revision which is clearly beyond the ambit of this proceeding, there is no action the Commission could appropriately take which would further the particular objectives of the petitioner.

74. The new showings as to the extent of existing AM and FM service, and the availability of FM channels will not be required in applications for new AM broadcast facilities in Alaska, which will continue to be governed by the more liberal policies which are presently set forth in paragraph (5) of Note 2 in Section 1.571. These policies, which were adopted on an interim basis at the time of the freeze, will be made permanent. Accordingly, the substance of aforementioned paragraph (5) is being added as a new paragraph (f) to Section 73.37. Moreover, we have decided to apply these policies with respect to applications submitted for new facilities in Puerto Rico, the Virgin Islands, Hawaii, Guam and American Samoa as indicated in paragraph (f). While the aural broadcast coverage of Alaska is, of course, inadequate on an area basis, this limitation is presently imposed by economic considerations (the sparseness of population with respect to the area of the State), rather than by any scarcity in available standard broadcast spectrum space, and the restrictions which accordingly are imposed are only those intended to limit interstation interference and insure that each new assignment will contribute efficiently to the improvement in broadcast service. Hawaii and Guam are both limited in geographical extent, and so isolated from other populated areas that standard broadcast stations can be assigned with only a limited need to consider interference effects external to the particular state or territory. We see no need to apply any more restrictive rules in these cases than with respect to Alaska. While the availability of standard broadcast service in Puerto Rico and the Virgin Islands is limited primarily by their proximity to Cuba, where many stations operate, and to Haiti and the Dominican Republic, this limitation is not sufficient to preclude adequate coverage of these comparatively small islands by standard broadcast facilities assigned to the communities therein, and we do not feel justified in imposing the more restrictive standards of the new rules to these territories. While the distances of these outlying states and territories from the conterminous states vary greatly, all are sufficiently far away that assignment policies which place relatively few obstacles in the way of new daytime and unlimited time standard

broadcast assignments in these areas can have little preclusionary effect on assignments in the conterminous states.

75. Having extracted the useful substance of Note 2 to § 1.571, as above described, we are deleting this Note, thereby, in effect, lifting the "freeze" on the filing of certain categories of applications.

76. When an applicant relies on a demonstration that the existing aural service to the community which he serves or proposes to serve is inadequate as a basis for the acceptance of his application, it should be evident that his application, to be eligible for a grant without hearing, must propose an operation that itself will provide an adequate service to the community. As is well known, the Commission consistently requires that a new standard broadcast station provide an interference-free signal of 5 mv/m or greater over the entire community to which it is assigned. This long standing requirement is presently not stated directly in the rules, but may be derived from § 73.188(b)(2), which requires that the transmitter site for a proposed station be so selected that a signal of 5 mv/m minimum strength will be delivered over the most distant residential section of the designated community, read in connection with the textual material of § 73.182(f) which makes it clear that service is considered to be provided only when the signal is interference-free, which, at night, may require a signal in excess of the 5 mv/m minimum. Since this requirement bears an important relationship to the application of the new rules, we consider it desirable that it be stated clearly and directly, and we have included it, together with the concomitant requirement for a 25 mv/m signal over business areas of the community in a new paragraph added to § 73.24, a section of the rules which specifies the showings which must be made prerequisite to the authorization of a new station or an increase in the facilities of an existing station. It is recognized that, in the individual case, an existing station proposing an increase in power within the power ceiling imposed on the class of station involved, or because of interference considerations, may be unable to meet fully the service requirements discussed above. In such an instance, if the proposed operation would provide service to the community substantially superior to that provided by the existing operation, and is otherwise in compliance with the rules, the Commission will give favorable consideration to a request for waiver of the community service requirement.

77. During the year following adoption of the current AM rules in 1964, over 400 major applications were filed. This total was due in part to pent-up demand created by the "freeze" period preceding adoption of the rules. Due to this large influx and the complex nature of the studies required under the "go-no go" system, a large backlog soon developed. As the average length of time to dispose of applications grew, so did the necessity to amend and update them. Consequently, the backlog tended to become self-perpetuating. Because of a reduction in personnel available to process AM applications, the filing of new proposals in numbers even approaching the total filed subsequent to the lifting of the last "freeze" will result inevitably in another large backlog. Thus steps may be necessary to control the influx of applications. Considerable thought has been given to the design of an ac-

ceptable method to accomplish this result. We have concluded, however, that it would be premature to institute control measures at the outset, when we are unable to predict accurately the rate of incoming applications. Accordingly, at this time, no restrictions will be placed on the potential number of proposals which may be filed. If the number submitted, however, becomes administratively burdensome, we will give further consideration to the imposition of control measures. These measures will probably involve the declaration of periodic "open" and "closed" seasons for the filing of applications. If it becomes necessary to institute such measures, they will be temporary in nature, and advance notice will be given, so that all parties will have ample time to complete and submit any applications which are in preparation.

78. The amendments to the rules, as discussed herein, are set forth in the attached Appendix. The additional requirements will apply to all applications filed after the effective date of these rules.

79. Accordingly, IT IS ORDERED, That, effective April 10, 1973, Part 73 of the Rules and Regulations IS AMENDED as set forth in the Appendix hereto. Authority for this action is found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

80. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX A

1. Section 1.571 is amended by redesignating Note 1 as Note and amending the text, and deleting Note 2 to read as follows:

§ 1.571 Processing of standard broadcast applications.

* * * * * * *

NOTE: No application for broadcast facilities in the conterminous United States tendered for filing after July 13, 1964, will be accepted for filing unless it complies fully with the provisions of § 73.24(b) and § 73.37(a) through (d) of this chapter, and no application for broadcast facilities in the conterminous United States tendered for filing after July 18, 1968, will be accepted for filing unless it complies fully with the provisions of § 73.24(b) and the provisions of § 73.37(a) through (e). No application for new or changed broadcast facilities in the states of Alaska, and Hawaii, the Commonwealth of Puerto Rico, and the territories of the Virgin Islands, Guam and American Samoa, tendered for filing after July 18, 1968 will be accepted for filing unless it complies fully with the provisions of §§ 73.24(b) and 73.37(a) through (f).

2. In § 73.24, par (b) & Note are amended, present par (j) becomes par (k) and a new par (j) is added to read as follows:

§ 73.24 Broadcast facilities, showings required.

* * * * * * *

(b) That a proposed new station (or a proposed change in the facilities of an authorized station) complies with the pertinent requirements of § 73.37.

NOTE: The provisions of § 73.37 shall not be applicable to new Class II–A stations or to stations for which applications were accepted for filing before July 13, 1964. With respect to such stations, the provisions of § 73.28(d), and the provisions of NOTE 1 of § 73.37 shall apply. Special provisions concerning interference from Class II–A to stations of other classes authorized after October 30, 1961 are contained in § 73.22(d) and NOTE 3 to § 73.21. The level of interference shall be computed pursuant to §§ 73.182 and 73.186.

* * * * * * *

(j) That the 25 mv/m contour encompasses the business district of the community to which the station is assigned, and that the 5 mv/m contour (or, at night, the interference-free contour, if of a higher value) encompasses all residential areas of such community.

(k) That the public interest, convenience and necessity will be served through the operation under the proposed assignment.

[§ 73.30 Amended]

3. Section 73.30 is amended by deleting paragraph (c).

4. In Section 73.37, amend the headnote & add new paragraphs (e), (f), and Notes 4, 5, 6, 7, and 8, to read as follows:

§ 73.37 Applications for broadcast facilities, showing required.

* * * * * * *

(e) In addition to a demonstration of compliance with the requirements of paragraph (a), and, where appropriate, paragraphs (b), (c), and (d) of this section, an application for a new standard broadcast station, or for a major change (see § 1.571(a)(1)) in an authorized standard broadcast station, as a condition for its acceptance, shall make satisfactory showings as indicated below for the kind of application submitted:

(1) Application for a new daytime station, or for a change in the frequency of an existing daytime station:

(i) That at least 25 percent of the area or population which would receive interference-free primary service from the proposed station does not receive such service from an authorized standard broadcast station, or receive service from an authorized FM broadcast station with a signal strength of 1 mv/m, or greater, or

(ii) That no FM channel is available for use in the community designated in the application and that at least 20 percent of the area or population of the community receives less than two daytime aural services. For the purpose of this showing an aural service shall be deemed to be provided by an interference-free groundwave signal from an authorized standard broadcast station of a strength of 5 mv/m, or greater, or by an F (50, 50) signal from an authorized FM broadcast station of a strength of 70 dbu (3.16 mv/m), or greater.

(2) Application for a new unlimited time station, for a change in the frequency of an authorized unlimited time station, or for nighttime facilities by an authorized daytime station, a satisfactory showing under (i) (except for a Class IV station), and under either (ii) or (iii):

(i) That objectionable interference at night will not result to any authorized station, as determined pursuant to § 73.182(o).

(ii) That at least 25 percent of the area or population which would receive interference-free primary service at night from the proposed station does not receive such service from an authorized standard broadcast station, or service from an authorized FM broadcast station with a signal strength of 1 mv/m, or greater, or

(iii) That no FM channel is available for use in the community designated in the application, and at least 20 percent of the area or population of the community receives less than two nighttime aural services. For the purpose of this showing, an aural service shall be deemed to be provided by an interference-free groundwave signal from an authorized standard broadcast station with a strength of 5 mv/m, or greater, or by an F (50, 50) signal from an authorized FM broadcast station with a strength of 70 dbu (3.16 mv/m), or greater.

(3) Application by an authorized station (other than a Class IV station) proposing changes in facilities, other than a change in frequency, must make a satisfactory showing, where appropriate, under (i), and under either (ii) or (iii).

(i) For a change in nighttime facilities, that the proposed change will not result in objectionable interference to other stations as determined pursuant to § 73.182 (o).

(ii) For an increase in power, either daytime or nighttime, that the authorized operation, during the portion of the broadcast day for which the power increase is sought, includes less than 80 percent of the area or population of the community to which the station is assigned within its 5 mv/m groundwave contour (or within its interference-free groundwave contour, if of a higher value), or,

(iii) For an increase in power, that at least 25 percent of the area or population which, as a result of the power increase, for the first time would receive interference-free primary service from the station is without primary service from any other standard broadcast station.

(f) Applications for new or changed facilities in the states of, Alaska and Hawaii, in the Commonwealth of Puerto Rico, and in the territories of the Virgin Islands, Guam and American Samoa will be accepted for filing only if satisfactory showings are submitted with respect to the following:

(1) The proposed operation complies with the requirements of paragraphs (a), (b), (c) and (d) of this section.

(2) Unlimited time operation, by other than a Class IV facility, will not cause objectionable skywave interference at night to an existing station, pursuant to § 73.182(o). In addition, each proposal for unlimited time operation (including Class IV proposals) shall meet at least one of the following conditions:

(i) Not more than 10 percent of the population included within the normally protected nighttime contour would receive objectionable interference.

(ii) The proposed operation would be the first standard broadcast facility assigned to the community which would provide nighttime service.

(iii) For a proposed new station, that at least 25 percent of the area or population included within the nighttime interference-free primary service contour is without nighttime primary standard broadcast service, or, for a proposed change in the nighttime facilities of an authorized station, that at least 25 percent of the area or population which would receive interference-free nighttime primary service from the station for the first time as a result of the change in facilities is without nighttime primary standard broadcast service.

* * * * * * *

NOTE 4: All applications for new stations, or for major changes in existing stations tendered for filing after July 18, 1968, for facilities in the conterminous United States, shall be subject to the provisions of paragraph (e) of this section, or, for facilities in the states of Alaska and Hawaii, the Commonwealth of Puerto Rico and the territories of the Virgin Islands, Guam and American Samoa, shall be subject to the provisions of paragraph (f) of this section.

NOTE 5: In making determinations of "aural service" to the community from standard broadcast or FM broadcast stations in showings pursuant to (e)(1)(ii) and (e)(2)(iii), service provided by any standard broadcast station or FM broadcast station whose transmitter site is located more than 50 miles from the nearest boundary of the community designated in the application shall be excluded from consideration.

NOTE 6: No FM channel is available for use in the community (see (e)(1)(ii) and (e)(2)(iii)), if no channel is assigned to the community for commercial use in the FM Table of Assignments (§ 73.202(b)), as amended by Commission action as of the date the application is tendered, or, if assigned, is occupied by an authorized facility, and no unoccupied channel can be utilized to serve the community pursuant to § 73.203(b).

NOTE 7: In the determination of the extent of existing aural service to a community, areas and populations of the community receiving service from a standard broadcast station and an FM broadcast station which are commonly owned shall be considered as receiving a single aural service from these stations. Service provided by noncommercial educational FM stations and standard broadcast stations shall not be included in the determination of existing aural service.

NOTE 8: An application for a new unlimited time station, other than a Class IV station, even though including a satisfactory showing pursuant to paragraph (e)(2) of this section will not be accepted for filing if the proposed daytime power is greater than the proposed nighttime power, unless it contains an additional satisfactory showing pursuant to (e)(1) of this section for daytime hours of operation.

APPENDIX B

Parties filing comments:

Robert D. Zellmer
Oil Shale Broadcasting Co. (KWSR)
Carl Como
Heart O'Wisconsin Broadcasters, Inc.
Ralph J. Bitzer, Consulting Engineer
Waldron Broadcasting Co. (WCIR)
WPVL, Inc.
WMRR Broadcasting Co.
Ashdown Broadcasters, Inc.
Dr. Wendell Cox
Vir James, Consulting Radio Engineers
E. Harold Munn, Jr., Consulting Engineer
Gordon A. Rogers (KGAR)
William O. Barry
Community Service Broadcasters (WTCA/WTCA–FM)
L. J. duTreil and Associates, Inc., Consulting Radio Engineers
Angel M. Rivera
James R. Coursolle (KKIN)
Lloyd E. Kolbe (KVLG)
Frederick Eckardt (WCLW)
Robert Z. Morrison (KCLN)
Clearwater Radio, Inc. (WTAN)
Scott McQueen (Sconnix Radio Enterprises)
Bradley University
Hugh J. Williams
WMLP, Inc.
Tri-State Broadcasting Co. (WGTA)
Golden West Broadcasters, et al.
Cohen and Dippell, Consulting Engineers
Hubbard Broadcasting, Inc.
Mid America Audio-Video, Inc. (WKAN)
Jansky and Bailey, Consulting Engineers
Kona Koast Broadcasting Co. (KKON)
Jules Cohen and Associates, Consulting Electronic Engineers
National Association of Broadcasters
Association of Federal Communications Consulting Engineers
Carl E. Smith, Consulting Radio Engineers
Capital Broadcasting Co., Inc. (KDXE)
Sea Broadcasting Corp. (WVAB)
Westchester Corp. (WIXZ)
KITN Radio
Robert A. Jones, Consulting Engineer
Community Broadcasters Association
Progressive Broadcasting Corp. (WINU)
Hubbard Broadcasting, Inc. (Further Comments)
Jet Broadcasting Co., Inc. and WHOT, Inc. (WJET, WHOT)
National Association of FM Broadcasters
The Outlet Co. (WJAR, WDBO, WDBO–FM)
Ben F. Dawson (KAYO)
Clear Channel Broadcasting Service
Association on Broadcasting Standards, Inc.
James S. Rivers, Inc. (WJAZ)
Douglas Properties Corp. (WOIO)
Storer Broadcasting Co.
Triangle Publications, Inc. (KFRE, WFBG, WFIL, WNHC, WNBF)
Mark/Way, Inc. (KAKC, KAKC–FM)
Broadcast-Plaza, Inc. (WTIC)
Southwestern Broadcasting Co. (WAPF)
Hudson Horizons, Inc./Jersey Horizons, Inc. (WGNY, WRAN)
Silliman, Moffet, and Kowalski, Consulting Engineers
McKenna and Wilkinson
Coastal Broadcasting Co., Inc. (WDEA, WDEA–FM)
WFLI, Inc.
Robert M. Booth, Jr.
Wycom Corp. (KODI)
Kingsley H. Murphy, Jr. (WISS)
Plough Broadcasting Co., Inc. (WMPS, WCAO, WPLO, WJJD, WCOP)
KULA Broadcasting Corp, et al.
Commercial Radio Equipment Co., Consulting Engineers
KBAR–AM
John H. Mullaney and Associates, Consulting Engineers
Fetzer Broadcasting Co. (WKZO)
Cedar Valley Radio
Midwest Television, Inc. (KFMB)
WAAM
Owen G. Shinn, et al.
Gates Radio Co.
KIKX Radio
KDHN Radio
KVRH–AM
Star Broadcasting Co. (KSXX)
Norman A. Thomas (WDNT, WJSO, WENR)
WPBC AM–FM Radio
Gunnison Broadcasting Co.
KTRT Radio
KFJB and KFJB–FM
Korral Radio, Inc. (KRAL)
Southern Broadcasting Co. (KOY, KTHT, WKIX, WKIX–FM, WRVA, WRVA–FM, WSGN, WTOB)
Dairyland Broadcasters, Inc. (KEYL)
Jerome Orr

KWCO Radio
Charles Smithgall (WRGA, WAAX, WRNG)
KDBM Radio
Prairie States Broadcasting Co., Inc. (KAWL)
National Broadcasting Co., Inc.
Parties filing reply comments:
Welcome Radio, Inc. (WSLR, WOKO, KTLK)
KLCB
Robert A. Jones, Consulting Engineer
National Enterprises, Inc. (KDRY)
Midwest Television, Inc. (KFMB)
Association on Broadcasting Standards, Inc.
National Association of FM Broadcasters
Cohen & Dippell, Consulting Engineers
Coastal Broadcasting Co., Inc.
Westchester Corp. (WIXZ)
KAIR—Number One Radio, Inc.
A. Earl Cullum, Jr. and Associates, Consulting Engineers
KPOP Radio

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

The Commission majority today ends its four year "freeze" on new or increased AM services. In doing so, and agreeing to accept new applications once again, they insure that the current garbled reception experienced by most of us on our AM band will soon be suitable only for the uses of John Cage and our other electronic musicians.

We must assume from the language of the majority's document that they contemplate additional night-time AM service in many regions of this country. If that is the case, then the more rigid "tests" or "requirements" they announce of "no locally available service," "expanding suburbs" or "FM channel availability" are little more than illusory means to a continued destruction of the "public convenience, interests or necessity."

To agree to accept new AM applications or applications for increased service from existing standard stations on theories of "need" for first or second local service, when it is acknowledged that, even absent "shortspace" violations, existing ground and skywave patterns will be disrupted by each new signal, is to do an extreme disservice to a great many listeners for the momentary convenience of a few. I say "momentary" because even the benefits of a new low power AM service to a relatively sparsely populated region would disappear as still more stations are added or services increased in other parts of the country.

I would much prefer to see a vigorous effort to increase FM usage and penetration in those less populous or rapidly growing regions where the majority today announces its willingness to reopen the AM band. The majority claims its new rules (which are admittedly even less severe than those we originally suggested might one day replace the freeze) will give an added filip to FM broadcasting. But if this Commission is *truly* committed to the full utilization of FM and the prevention of any further interference in the clear-channel dominated night-time AM band, it would not countenance the least backsliding from its admirable 1968 position to channel *all* new services into the FM band.

Surely it would not be difficult to write legislation, similar to that which has so aided UHF penetration, which would require all newly

manufactured radios to contain FM as well as AM tuners. And that is just one way of putting the full weight of this Commission behind a full-service AM–FM radio commitment. Glowing language to the contrary, however, reopening the AM band once again to additional applications unfortunately does not evince a sufficient commitment to FM to elevate it from its current status as a second class citizen in many parts of this country.

I have consistently opposed the increases in interference in aural reception that have been caused, first in AM and more recently even in FM, by waivers of our various technical rules and by the inadequacies of the rules themselves. See my numerous shortspacing dissents, e.g., *WHLN*, — F.C.C. 2d — (decided December 14, 1972); *Storer Broadcasting Co.*, 12 P & F Radio Reg. 2d 815 (1968). The AM freeze was a fresh breath of reason and sanity amidst the normal regulation-by-deterioration that constitutes the traditional approach of this Commission to the radio frequencies—but before we have time to breathe clearly long enough to assess its effect, we find it is being eliminated. I dissent.

SEPARATE STATEMENT OF COMMISSIONER RICHARD E. WILEY

The Commission announces today what I regard as a carefully structured plan designed to improve aural service, both daytime and nighttime, in communities where service is presently absent or inadequate.

Contrary to Commissioner Johnson's view, I do not believe that the creation of a limited opportunity for new nighttime AM service in underserved areas, or the improvement of existing facilities which are no longer adequate because of burgeoning population growth and urban expansion, will lead to increased and unacceptable disruptions to our present broadcast service. In this connection, it should be noted initially that, in every circumstance where new or improved aural service is proposed, we will continue to consider the availability of FM as the primary means of remedying service deficiencies. Moreover, the clear import of our Report and Order is that the introduction of new standard broadcast transmission stations, as well as the upgrading of existing facilities, will be permitted only after a satisfactory showing that objectionable interference will not result (see Sections 73.87(e)(2)(i), 73.87(e)(3)(i) and 73.87(f)(2)). Let us be very clear on this point: the Commission's action effects absolutely no relaxation of our present rules controlling the level of interference between stations.

Accordingly, our partial lifting of the AM freeze seems to me to be an intelligent, carefully measured and altogether salutary administrative response to legitimate and pressing needs for broadcast service in areas presently unserved or inadequately served, while in no way diminishing the Commission's long-standing requirement that new or expanded service shall not result in objectionable interference. Thus, it seems to me that the Commission's action clearly serves the public interest.

F.C.C. 73–188

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re:	
CERES CABLE CO., INC., CERES, CALIF.	CAC–313 CA434
CERES CABLE CO., INC., STANISLAUS COUNTY, CALIF.	CAC–314 CA435
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 22, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. On April 28, 1972, Ceres Cable Company, Inc., filed the above-captioned applications (CAC–313, CAC–314) for certificates of compliance for new cable television systems at Ceres, California, and in adjoining Stanislaus County, California, within a five mile radius contiguous to the City of Ceres. The proposed system will operate with 20 channel capacity to offer the following California television signals: KTVU (Ind.), Oakland; KCRA–TV (NBC), KOVR (ABC), KVIE (Educ.), and KTXL (Ind.), Sacramento; KHBK–TV (Ind.), Sand Francisco; KXTV (CBS), Stockton; KGSC–TV (Ind.), San Jose[1]; and KLOC–TV (Ind.), Modesto. Public notice of the filing of these applications was given May 17, 1972. On June 16, 1972, Kelly Broadcasting Company, licensee of Station KCRA–TV, Sacramento, California, filed an "Objection of Kelly Broadcasting Company to Application for Certificate of Compliance," and Great Western Broadcasting Corp., licensee of Television Broadcast Station KXTV, Sacramento, California, filed an "Objection of Great Western Broadcasting Corp. Pursuant to Section 76.17," both directed against grant of the above-captioned applications. On August 7, 1972, Ceres amended its applications, and public notice of the amendments was given August 31, 1972. Further amendments were filed October 17, 1972; November 14, 1972; December 12, 1972; and January 19, 1973.

2. In its Objection, Kelly Broadcasting alleges: (a) that carriage of KNTV—an out-of-market network station—would violate Section 76.61 of the Commission's Rules, and (b) that Ceres' franchise establishes a fee of 5% of gross receipts which exceeds the limits established in Section 76.31 of the Rules. In its Objection, Great Western alleges:

[1] Ceres initially proposed carriage of KNTV (ABC), San Jose, but amended its proposal August 7 to specify KGSC–TV. On October 16, 1972, Ceres deleted its proposal to carry KGSC–TV.

(c) that carriage of KNTV is inconsistent with the rules; (d) that Ceres' franchises are inconsistent with the rules because: (1) they do not contain a recitation that they were awarded in a manner consistent with Section 76.31 of the Rules; (2) they do not contain a requirement relating to extension of service as provided for in Section 76.31 of the Rules; (3) they are for too long a term; (4) they do not provide an adequate complaint procedure; (5) they do not provide for changes required by the Federal Communications Commission and thus are inconsistent with Section 76.31(a)(6) of the Rules; and (6) the franchise fees exceed the 3% maximum permitted absent a special showing; (e) that Ceres has not adequately explained its access channel plans as required by Sections 76.13(a)(4) and 76.251 of the Rules; (f) that Ceres has not proposed to provide the educational access channel required by Section 76.251(a)(5) of the Rules; and (g) that any grant of these applications should be conditioned on compliance with the program exclusivity rules.

3. We rule on the objections as follows: (a)(c) This objection was mooted when Ceres deleted its proposal to carry KNTV; (b) The franchises here involved were granted before March 31, 1972,[2] and therefore qualify despite 5% fees since they show the substantial compliance with our rules which is permitted until March 31, 1977. E.g. *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10; (d)(1) We find an adequate substitute for the franchise recitation in Ceres' unchallenged assurance that the "initial franchise was granted in public session by the respective councils"; (2) commitment is made that significant construction will be completed within one year; (3) the term of the franchises must be modified by March 31, 1977, and is therefore acceptable under the substantial compliance test; (4) Ceres undertakes to investigate and attempt to resolve subscriber complaints and states that it will maintain a local office; (5) The City of Ceres has advised that the franchise will be brought into compliance with Commission requirements; (6) This issue is disposed of in (b) above; (e) an acceptable showing of access plans is made in Ceres' amendment of January 19, 1973. E.g. *Viking Media Corporation*, FCC 72–875, 37 FCC 2d 605, 606; (f) This problem was mooted by Ceres' amendment of December 12, 1972, which provides for such a channel; and (g) cable television operators are expected to comply with the requirements of the Commission's rules; however, we have no requirement that the certificating process be used to impose the type of condition here requested.[3]

In view of the foregoing, the Commission finds that a grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection of Kelly Broadcasting Company to Application for Certificate of Compliance" filed June 16, 1972, IS DENIED.

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[2] The franchise involved in CAC–313 was granted March 27, 1967. The ordinance involved in CAC–314 was adopted April 10, 1970.

[3] Nonetheless, Ceres' failure to respond to this objection must be treated as a waiver of any later claim to a stay pursuant to Section 76.97 of the Rules.

IT IS FURTHER ORDERED, That the "Objection of Great Western Broadcasting Corp. Pursuant to Section 76.17" filed June 16, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned applications (CAC–313, CAC–314) of Ceres Cable Company, Inc., filed April 28, 1972, ARE GRANTED and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-83

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 15 OF THE COMMISSION'S RULES TO REGULATE THE OPERATION OF A CLASS I TV DEVICE—A NEW RESTRICTED RADIATION DEVICE WHICH PRODUCES AN RF CARRIER MODULATED BY A TV SIGNAL and AMENDMENT OF PART 1 TO PROVIDE A FEE SCHEDULE FOR TYPE APPROVAL OF SUCH DEVICES	Docket No. 19281

ORDER

(Adopted January 18, 1973; Released January 19, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. Prior to adopting the Report and Order [1] in the subject Docket, the Commission waived §§ 2.805 and 15.7 of our Rules to permit several companies to legally market Class I TV devices. These devices were first tested at our laboratory and found to comply with the technical standards proposed [2] for such equipment.

2. The waivers granted to these manufacturers, to permit the sale and shipment of these devices, were to originally terminate on the effective date of the Rules adopted in this proceeding. The rules adopted specify type approval (equipment to be submitted to the Commission for testing) as a prerequisite for marketing Class I TV devices. Therefore, the waivers were extended to March 1, 1973, in the Report and Order to provide the necessary time for the manufacturer to procure type approval for devices currently being marketed under waivers granted.

3. The Commission has received a Petition for Reconsideration from the Matsushita Electric Corporation of America, 200 Park Avenue, New York, New York 10017, requesting a further extension of the termination date of the waiver of §§ 2.805 and 15.7, which permitted marketing of Class I TV devices and simultaneously requesting an extension of the effective date of § 15.407 of our Rules. Section 15.407 requires a Class I TV device to be equipped with a receiver

[1] Docket 19281, Order adopted December 6, 1972 (37 F.R. 26601).
[2] Docket 19281, Notice of Proposed Rule Making, adopted July 14, 1971 (36 F.R. 13793). Second Notice of Proposed Rule Making, adopted September 8, 1971 (36 F.R. 18656).

transfer switch having 60 dB isolation; this switch requirement was not included in the proposed rules for Class I TV devices. Matsushita states that unless their Petition for Reconsideration is granted it will "necessitate discontinuance of production and scrapping of considerable transfer switches which have not been designed to embody 60 dB isolation." The petitioner also claims that the March 1, 1973, termination date for waivers does not provide adequate time in which to produce a Class I TV device which complies with our Rules.

4. Matsushita requests that the effective date of § 15.407 and the termination date of the waiver be extended until July 1, 1973. The Commission finds that the schedule presented by Matsushita for development and design, type approval, and manufacturing procurement to support this request is reasonable and provides for an orderly incorporation of the receiver transfer switch as part of Class I TV devices. The Commission further finds that retaining the effective date of January 19, 1973, would work a hardship on the manufacturers of Class I TV devices and that extending this date for six months would be in the public interest. The effective date of the rules for Class I TV devices, Subpart H of Part 15, is hereby extended to July 1, 1973.

5. No action is required with respect to the waivers, since these waivers, by their terms, are valid until the final rules for Class I TV devices become effective, which is now July 1, 1973. The waivers are thus automatically extended by this action.

6. In view of the foregoing, IT IS ORDERED that the above described petition is granted and the effective date of the Rules adopted in the Report and Order in this proceeding be extended until July 1, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-85

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of.	
COLORADO WEST BROADCASTING, INC., GLENWOOD SPRINGS, COLO.	Docket No. 19588 File No. BPH-7646
GLENWOOD BROADCASTING, INC., GLENWOOD SPRINGS, COLO.	Docket No. 19589 File No. BPH-7707
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 21, 1973; Released February 23, 1973)

BY THE REVIEW BOARD:

1. Before the Review Board is a petition to enlarge issues, filed October 13, 1972, by Colorado West Broadcasting, Inc. (Colorado West), requesting the addition of staffing and *Suburban* issues against Glenwood Broadcasting, Inc. (Glenwood).[1]

STAFFING ISSUE

2. In support of its first request, Colorado West points out that Glenwood proposes to operate its station 126 hours per week with a staff of six persons; that an exhibit filed in lieu of Section IV of Glenwood's application reveals a proposal to "add two additional employees . . . [a]t least one of [whom] will probably be full time"; and that with only 13½ hours of program duplication of its commonly-owned standard broadcast Station KGLN in Glenwood Springs, Glenwood "apparently" intends to utilize the four full-time and two part-time staff of KGLN together with "1½" prospective employees, to broadcast 112½ hours of separate FM programming.[2] Colorado West cites *Regal Broadcasting Corp.* (*WHRL-FM*), FCC 68R-386, 14 RR 2d 287, where it alleges, under an almost identical staffing and hours-of-operation proposal, and with a large percentage of local programming, a staffing issue was added. Petitioner characterizes Glenwood's staffing proposal as "so vague that it raises grave doubts" as to the possibility of its effectuation. The Broadcast Bureau opposes the addition of a staff adequacy issue primarily on the grounds that petitioner failed to submit supporting affidavits of individuals with personal knowledge, and would distinguish *Regal* as involving programming much more varied and having larger amounts of local

[1] Also before the Board are the following related pleadings: (a) Broadcast Bureau's opposition, filed November 1, 1972; (b) Glenwood's opposition, filed November 3, 1972; and (c) Colorado West's reply, filed November 13, 1972.

[2] This, Colorado West asserts, is in addition to an "average of approximately 70–84 hours" that KGLN currently operates per week.

programming more complex and unusual than that proposed by Glenwood.

3. In opposition, Glenwood accuses Colorado West of making a variety of unsupported assumptions with regard to its staff. It attempts to illustrate that each employee will "contribute considerable time" to the proposed FM operation, and submits that the efficacy of its proposal is bolstered because the studio and transmitter locations for the AM and proposed FM stations are the same. Finally, Glenwood, like the Broadcast Bureau, finds the proposal discussed in Regal disparate from its own proposal; therefore, the case is not, according to Glenwood, precedent for adding an issue here. Colorado West's reply contrasts Glenwood's staff proposal in its application and that in the opposition pleading, concluding that the inadequacy is compounded by conflicting and confusing representations.

4. In the Board's view, an adequacy of staff issue is not warranted. Colorado West's allegations are not supported by affidavits of a person or persons having personal knowledge, as required by Section 1.229(c) of the Commission's Rules. Moreover, Colorado West's pleadings do not contain specific allegations of fact which are sufficient to support its contention that Glenwood's proposal is inadequate. *Tri County Broadcasting Co.*, 27 FCC 2d 1013, 21 RR 2d 380 (1971).[3] We also agree with the Broadcast Bureau and Glenwood that *Regal Broadcasting Corp.*, *supra*, is factually dissimilar from this case. Glenwood's programming proposal is not nearly as ambitious as that proposed in *Regal*,[4] and, in our opinion, Glenwood's staffing arrangements appear to be adequate to effectuate its proposed operation.

SUBURBAN ISSUE

5. Next, Colorado West asserts that Glenwood's ascertainment efforts fail to comply with the *Primer*,[5] in that the applicant neglected to determine the current number of "foreign stock," and emphasized business oriented interests, while disregarding youth, ethnic and racial minorities and educational leaders, who, Colorado West argues, constitute significant groups in the Glenwood Springs community. Since significant segments of the population were not included, petitioner argues, the survey is unrepresentative and, hence, invalid, citing *North American Broadcasting Co., Inc.*, 21 FCC 2d 631, 18 RR 2d 452 (1970). The Broadcast Bureau opposes the request on the grounds that, "[a]side from the bare allegations of petitioner, herein, there is no showing and no supporting data that a significant group has been omitted from Glenwood's survey" as delineated in the *Primer*.[6]

[3] See also our recent Memorandum Opinion and Order in this proceeding (FCC 73R–72, released February 9, 1973), where we refused to add a staffing issue against Colorado West because, among other reasons, Glenwood, the petitioner, failed to comply with Section 1.229(c) of the Rules.

[4] Glenwood proposes primarily recorded music, 13% news (most of which will be duplicated), 1.03% public affairs and 5.5% other (part of which will also be duplicated).

[5] *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971).

[6] The Bureau is apparently referring to paragraph 32 and the answer to question 10 wherein the Commission specified that the determination of what significant groups comprise the community "may be challenged on a showing, including supporting data, that a significant group has been omitted." 27 FCC 2d at 663, 683, 21 RR 2d at 1521, 1543.

6. Glenwood, in opposition, condemns the petition as defective in that it fails to assert that Glenwood's community profile is inaccurate; that the ascertainment does not reflect the needs of the residents in the proposed service area; and that the proposed programming is unresponsive to those problems and needs. Glenwood maintains that two directors of the local Boys Club were among the community leaders contacted and that "it is readily apparent that their relationship with youth would lead to an awareness on their part of the problems of young people." [7] Glenwood also points out that two officials of nearby Colorado Mountain College were included in their survey. With respect to the charge of disregarding minorities, Glenwood states that Commission policy sanctions an applicant's efforts to reasonably determine the significance of a particular group. Glenwood maintains that petitioner has acknowledged that the community is "very homogeneous", [8] and that the *Primer* [9] supports its contention that, while size is not the sole touchstone of a group's significance, numbers are an important factor. Therefore, Glenwood argues, its determination that the Spanish-American population lacks significance within the meaning of the *Primer*,[10] is both reasonable and determinative, without additional data to the contrary. Glenwood accuses Colorado West of finding "no ascertained problem as they specifically affect Hispano-Americans and propos[ing] no programming in either English or Spanish to meet the particular needs of this small population segment," while Glenwood proposes to simulcast a Spanish language religious program which is currently broadcast on its AM station.

7. The Review Board will not add a *Suburban* issue against Glenwood. In our view, Colorado West has failed to raise any serious questions which would require an evidentiary inquiry into Glenwood's ascertainment efforts. Not only has Glenwood adequately rebutted petitioner's allegations, but our examination of the applicant's survey indicates consultation with a representative cross-section of what appears to be a homogeneous population, despite the ethnic origins of some of the people.[11] Glenwood appears to have made a good faith effort to inform itself of area problems and has demonstrated an intention to respond to Community needs. *Greenfield Broadcasting Corp.*, 30 FCC 2d 774, 22 RR 2d 497, vacated on other grounds 32 FCC 2d 135 (1971).[12] Neither does Glenwood's programming proposal reveal on its face a

[7] Glenwood points out that one of the needs elicited from its survey was for a recreation center for teenagers, and underscores the validity of this reflected need by indicating that the very same response is found in Colorado West's survey.

[8] Of the 4,084 persons within Glenwood's proposed 1 mv/m contour, 123 persons, or three percent, are characterized as ethnic and/or racial minorities. 1960 population figures indicate that 14.2% of the county population are of "foreign stock," but apparently no parallel 1970 Census figures are available.

[9] 27 FCC 2d at 660 n. 8, 21 RR 2d at 1518.

[10] Glenwood points out that Colorado West, in an exhibit to its application, states that the majority of the three percent are Spanish-Americans.

[11] While not specifically required by the *Primer*, Glenwood has not submitted a list of the members of the general public surveyed. Such a list would facilitate consideration of a challenge to the applicant's ascertainment efforts, but because of the homogeneous population and because the allegations of the petitioner are merely conclusory and unsupported, the Board has no reason to question Glenwood's representation of conducting a broad, cross-sectional survey.

[12] Petitioner argues in its reply that Glenwood proposes to simulcast a Spanish language religious program over its FM station which it now broadcasts on KGLN without having determined the need for it. In our view, this is immaterial and does not raise a serious question warranting a hearing.

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lack of awareness of and responsiveness to the needs and problems of the various segments of Glenwood Springs. Indeed, the Commission recognizes that minority interests may be adequately served by programming having a wider range of appeal. *Cf. WKBN Broadcasting Corp.*, 30 FCC 2d 958, 22 RR 2d 609 (1971). The Board also agrees with Glenwood that *North American*, *supra*, is inapposite. The applicant in *North American* proposed to serve 30,000 persons, conducted only 28 interviews eliciting mostly program preferences, failed to interview any members of the 23% black populace and neglected to survey the general public. In contrast, Glenwood surveyed 24 community leaders and 40 members of the general public out of a homogeneous population of 4,084 persons. Since petitioner has failed to show that Glenwood has not selected community leaders representative of significant groups, its determination in this regard will not be questioned. *The Evening News Association*, 35 FCC 2d 366, 24 RR 2d 667 (1972).

8. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed October 13, 1972, by Colorado West Broadcasting, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-168

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTION 13.70 OF THE COMMISSION'S RULES CONCERNING COMMERCIAL RADIO OPERATORS

ORDER

(Adopted February 14, 1973; Released February 20, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. Section 13.70 of the Commission's Rules establishes prohibitions against fraudulent practices relating to commercial radio operator licenses.

2. The rule initially provided that "No licensed radio operator or other person shall obtain or attempt to obtain or assist another to obtain an operator's license by fraudulent means." By Order in Docket 14401, released March 29, 1962, (FCC 62-325, 27 FR 3203), the Commission amended Section 13.70 and extended the prohibition to include the alteration or duplication of a commercial radio operator license as well as the obtaining of the same by fraudulent means. Inadvertently omitted however, was the appropriate reference with respect to an "attempt" to obtain such license by fraud, notwithstanding that the same was included in the original rule and is provided for in Section 303(m)(1)(F) of the Communications Act.[1] Section 13.70 will therefore now be amended to include the omitted statutory language.

3. No general notice of proposed rule making under the Administrative Procedure Act is required as the amendment is reiterating what is already a statutory provision. Authority for this amendment is contained in §§ 4(i), 303(m) and 303(r) of the Communications Act of 1934, as amended.

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[1] Section 303 provides in pertinent part as follows:
Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall—

* * * * * * *

(m)(1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee—

* * * * * * *

(F) Has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

4. Accordingly, IT IS ORDERED, That effective March 28, 1973, Part 15 IS AMENDED as set forth below:

§ 13.70 Fraudulent Licenses.

No licensed radio operator or other person shall alter, duplicate, or fraudulently obtain or attempt to obtain, or assist another to alter, duplicate or fraudulently obtain or attempt to obtain an operator license. Nor shall any person use a license issued to another or a license that he knows to be altered, duplicated, or fraudulently obtained.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-18

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
COMMUNICATIONS SATELLITE CORP.
For Extension of Authority Re Services
to NASA

JANUARY 4, 1973.

COMMUNICATIONS SATELLITE CORP.,
950 L'Enfant Plaza SW.,
Washington, D.C. 20024

GENTLEMEN: This is in reference to your letter of December 27, 1972, requesting an extension from December 31, 1972 to January 31, 1973 of your authority to provide satellite communications service directly to NASA in support of NSC/NASCOM. On December 29, 1972 the Commission granted an extension of your authority through Friday, January 5, 1973, pending further consideration of your request.

NASA has written to the Commission supporting the request for a one month extension as necessary in order to permit completion of its procurement actions for transfer of the service to another carrier. NASA also advises us that it will lose "unrecoverable data from our scientific spacecraft" if the service from Comsat is not continued during the time necessary to complete transfer of the service to another carrier. OTP has also submitted a letter supporting your request for a one month extension of time to serve NASA directly.

After considering all of the circumstances, we have concluded that it would not be in the public interest to interrupt the service, and we are accordingly authorizing Comsat to continue to provide services directly to NASA through January 31, 1973.

Commissioner Johnson concurs in the result.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-89

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of COSMOPOLITAN BROADCASTING CORP., NEWARK, N.J. For Renewal of Main, Auxiliary and SCA License for WHBI(FM)	Docket No. 19657 File No. BRH-1359 BRSCA-746

MEMORANDUM OPINION AND ORDER

(Adopted February 23, 1973; Released February 27, 1973)

BY THE REVIEW BOARD:

1. Cosmopolitan Broadcasting Corporation, whose application for renewal of license has been designated for hearing on various issues some of which relate to its performance in broadcasting foreign language programs, requests that the issues be enlarged to allow a determination to be made whether its programming has been meritorious "particularly with regard to programs designed to serve the needs and tastes of ethnic minorities within the station's service area." [1]

2. The addition of a meritorious programming issue is warranted, as indicated by the cases cited by petitioner and the Bureau. However, the issue as proposed departs from the wording used in these cases, and the Board is unable to agree with petitioner's argument in support of the change. The customary issue does not limit an applicant's showing to public service programming, it only emphasizes the importance of programs of this type. Therefore, Cosmopolitan will have the opportunity to offer evidence on the ethnic oriented phases of its past programming; but these programs do not automatically qualify as meritorious because they have been "designated" to serve the needs and tastes of ethnic minorities.[2]

3. As the Board has consistently held, the showing made under the new issue must be limited to the licensee's performance before it learned that its license was in jeopardy, and the parties are free to argue the weight which should be accorded such evidence. *Western Communications Inc.*, —— FCC 2d —— 1973 (FCC 73R-1).

4. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed by Cosmopolitan Broadcasting Corporation, IS GRANTED to the extent herein indicated and otherwise IS DENIED, and that

[1] The petition to enlarge issues was filed January 11, 1973; the Broadcast Bureau filed its comments on January 22, 1973; the petitioner's response was filed January 29, 1973.

[2] Thus, the Board specifically does not hold that foreign language and ethnic programs are to be viewed as public service programs if, regardless of their specific classification for logging purposes, they serve the needs of ethnic minorities.

the issues herein ARE ENLARGED by the addition of the following issue:

To determine whether the programming of Station WHBI(FM) has been meritorious, particularly with regard to public service programs.

5. IT IS FURTHER ORDERED, That the burdens of proceeding with the introduction of evidence and proof under the issue added herein SHALL BE on Cosmopolitan Broadcasting Corporation.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R–88

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of EASTERN BROADCASTING CO., HARLAN, KY. For Construction Permit	Docket No. 19614 File No. BP–17817
RADIO HARLAN, INC. (WHLN), HARLAN, KY. For Renewal of License	Docket No. 19615 File No. BR–1129

MEMORANDUM OPINION AND ORDER

(Adopted February 23, 1973; Released February 27, 1973)

BY THE REVIEW BOARD:

1. Before the Review Board for consideration is a petition to enlarge issues, filed November 10, 1972, by Radio Harlan, Inc. (WHLN),[1] in which the petitioner seeks the addition of a cost estimates issue against Eastern Broadcasting Company (Eastern) and a comparative programming issue.

2. As amended,[2] Eastern's financial proposal includes a bank loan commitment in the amount of $100,000.00. Therefore, even if the Board were to accept WHLN's contention that Eastern will have a total cash requirement of some $92,525.00, the proposed bank loan would provide an available cushion of several thousand dollars to the applicant. It is thus apparent that no useful purpose would be served by inquiring into Eastern's cost estimates. Nor does the fact that an availability of funds issue has been specified against Eastern necessitate a different conclusion. Eastern's financial qualifications will stand or fall on its ability to demonstrate that the proposed bank loan is, in fact, available, regardless of whether petitioner's allegations regarding costs are accurate. See *Snake River Valley Television, Inc.*, 18 FCC 2d 70, 16 RR 2d 442 (1969). The request for a cost estimates issue will therefore be denied.

3. In order to support a request for a comparative programming issue a proponent is required to make a *prima facie* showing that there are significant differences between the programming proposed by the applicants, and that its claimed superiority in program planning is related to ascertained community needs. *Chapman Radio and Television Company*, 7 FCC 2d 213, 9 RR 2d 635 (1967). The showing should clearly indicate the relationship between the petitioner's own

[1] Other related pleadings before the Board for consideration are: (a) supplement, filed November 13, 1972, by WHLN; (b) opposition, filed December 4, 1972, by Eastern; (c) Broadcast Bureau's opposition, filed December 4, 1972; and (d) reply, filed December 20, 1972, by WHLN.

[2] An amendment tendered by Eastern on November 28, 1972, was accepted by the Administrative Law Judge by Order, FCC 72M–1545, released December 14, 1972.

ascertainment of community needs and the reflection of those needs in the substantially greater amount of time, effort and resources proposed to be devoted to certain of the categories of programming. WHLN, in its pleading, relies upon two allegations: (1) that it proposes to devote substantially more time—both absolutely and proportionately—to the category of public affairs programming than Eastern;[3] and (2) that, as shown in its pending renewal application and actual past broadcast record, it is proposing a wide variety of public affairs programming which is reflective of the problems unearthed in its ascertainment efforts; in contrast, WHLN characterizes Eastern's proposal as a "barebone public affairs package that reflects little imagination and no real sensitivity to local problems." The Board is of the view that petitioner has failed to adequately demonstrate that the difference in public affairs programming is not merely the result of differences in judgment.[4] Thus, petitioner has not shown that the greater amount of time it proposes to devote to public affairs programs is related to greater responsiveness to its ascertained needs and interests of the community. As pointed out by the Broadcast Bureau, in its opposition, WHLN has not, except for two programs, set forth how its proposed programming is designed to meet the local needs and problems it has ascertained, and some of the programs categorized as public affairs do not appear to fall within the definition set forth in Section 73.112(d)(1) of the Rules. As a result the Board agrees with the Bureau that WHLN has failed to allege sufficient facts to meet the threshold showing required by *Chapman Radio and Television Company, supra.*

4. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed November 10, 1972, by Radio Harlan, Inc. (WHLN), IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[3] WHLN alleges that it proposes to devote 6 hours and 58 minutes or 7.83% of its total broadcast time to public affairs; Eastern proposes to devote 2 hours and 20 minutes or 2.4% (according to Broadcast Bureau calculations) of its broadcast time to public affairs. By Order, FCC 73M-204, released February 14, 1973, the Administrative Law Judge (ALJ) accepted an amendment to Eastern's *Suburban* showing: the ALJ noted, however, that Eastern would not claim any preference under the contingent comparative issue, as a result of acceptance of the amendment.

[4] The Board notes that, although WHLN proposes to devote greater amounts of time to the public affairs category, it does not fare so well in comparison with Eastern in the categories of news and all other programming exclusive of entertainment and sports. For example, Eastern proposes to devote 10 hours and 55 minutes or 13% of its broadcast week to news, whereas WHLN proposes to devote 8 hours and 22 minutes or 9.4% of its broadcast week to news.

F.C.C. 73-135

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ACTION FOR CHILDRENS TELEVISION, INC., NEWTONVILLE, MASS.
Concerning Fairness Doctrine Re National Association of Broadcasters

JANUARY 31, 1973

Ms. EVELYN SARSON,
Executive Director,
Action for Childrens Television, Inc.,
46 Austin Street, Newtonville, Mass. 02160

DEAR MS. SARSON: This refers to the complaint filed by Action for Childrens Television (ACT) regarding an announcement distributed to television stations by the Television Information Office (TIO) of the National Association of Broadcasters.

Your letter to the Commission and enclosures indicate the following:

1. TIO distributed to television stations in August or September 1971 a one-minute announcement titled "Do Children Learn from Television?", a copy of which you have forwarded to the Commission and which is attached hereto. The announcement portrayed five children stating what they had learned from television, e.g., "how to cook hamburgers," "about pollution and what they're doing about it." "three specific things I'm never going to take—alcoholism, smoking and bad drugs."

2. In November 1971 ACT sent a memorandum to 133 television stations in the top 25 markets, stating that the TIO announcements discussed a controversial issue of public importance—"The issues of the quality and effects of children's television". ACT asked how often and at what times the stations had carried or would carry the TIO spot, what other discussions of the children's television issue they had carried, and "how you intend to discharge your Fairness Doctrine responsibilities." ACT offered to provide the stations with a public service announcement presenting another view on the issue. In support of its contention that the announcement discussed a controversial issue, ACT cited portions of an article in the September 1971 issue of the TIO newsletter, which stated in part,

> **Too often, TV's critics fail to give credit to the medium for positive values it presents. TIO's new 60-second color spot offers a charming, low-key response to some of those critics.**

ACT's memorandum to the TV stations cited the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Business Executives' Move for Vietnam Peace* v. *FCC*, as stating that a format of spot announcements for discussion of public issues "has great potential for enlivening and enriching debate," since it presents arguments in an "uninhibited wide-open fashion."

3. ACT states that as of January 1972 it received 35 replies, 21 stating that the stations had not aired the TIO spot, 11 stating that the stations had aired the spot, and three others requesting "ACT's counterspot while not admitting whether or not they had aired the TIO spot." ACT states further that it sent a set of three slides and a 30-second script to all stations that had requested the ACT spot or had broadcast the TIO spot. Letters ACT has forwarded from two stations stated that "because it seems to us beyond dispute that children (as well as others) learn from television" they did not understand ACT's assertion that the announcement discussed a controversial issue of public importance subject to the Fairness Doctrine. The stations stated that "We will consider the question further should you submit some amplification of your request or description of the contrasting viewpoint you allege to be required." A third station stated that it had covered the issue of children's television programming on various occasions, including one within the past month on which the producer of "Sesame Street," a representative of "Let's Make a Wish" and the author of "Television's Children" had participated. The only other station whose response ACT forwarded to the Commission expressed willingness to broadcast ACT's viewpoint but objected to the first two paragraphs of ACT's proposed announcement, stating that "On this particular television station, we do not run 'twice as many commercials [on children's programs] as on adult prime time shows,'" and "we do not carry any 'repetitive violent cartoons.'" You state that modifying the ACT script (a copy of which is attached hereto) would be "interfering with the editorial freedom of our response."

4. ACT has forwarded a copy of the January 1972 issue of the TIO newsletter which contains the following language:

> **TIO's "Children's Spot" has proved so effective on the air that some of television's most stubborn critics are trying to invoke the Fairness Doctrine so that they can get free time to mount further attacks . . . but station managers need not be intimidated by vocal critics demanding time for a reply * * * In our view, the spot—to the extent that it is controversial at all—is a modest and sensible rebuttal to any of the unbalanced criticism that has already been aired by most television stations.**

5. ACT requests that the Commission take action on this matter "in light of the clear contravention of the [U.S. Circuit Court of Appeals] ruling by at least four of the stations we contacted," and it urges

> (i) that the Commission "declare that all stations that carried the TIO spot should make time available to represent the other side of the issue in similar fashion," and
>
> (ii) that "any licensee which claims it has adequately balanced the TIO spot should be requested to advise the FCC and ACT of the programming it deems to have presented the opposing viewpoint adequately."

The complaint here essentially seeks to invoke the fairness doctrine on the ground that the TIO announcement dealt implicitly with a controversial issue as contrasted to any explicit reference. The matter of implicit advocacy is one of those now being considered in the Commission's Fairness Inquiry in Docket No. 19260. We need not consider further the ACT complaint as to this matter, however, because we find that it is defective on procedural grounds.

A licensee who presents one side of a controversial issue of public importance must afford reasonable opportunity for the presentation of contrasting viewpoints. This requirement, embodied in the fairness doctrine, places the responsibility upon the licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The choice of program format and spokesmen for presentation of contrasting views is within the licensee's discretion. The Commission will review complaints only to determine whether the licensee can be said to have acted reasonably and in good faith.

In its Public Notice of July 1, 1964, "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance," the Commission stated that a complainant is expected to submit specific information indicating, *inter alia*, "the date and time when the program was carried" discussing a controversial issue, "the basis for the claim that the station has presented only one side of the question" and "whether the station has afforded, or has plans to afford, an opportunity for the presentation of contrasting viewpoints."

Here the complainant has not made the required showing. Of the four station responses forwarded by ACT, one stated that the issue of children's programming had been covered on various occasions, one expressed willingness to broadcast ACT's viewpoint but asked modification of the language of the proposed announcement on the ground that certain statements therein were inapplicable to the particular station, and two stated they did not understand ACT's assertion that the TIO announcement discussed a controversial issue under the Fairness Doctrine but added that they would consider the question further should ACT "submit some amplification of your request or description of the contrasting viewpoint you allege to be required." We cannot find that the four responses submitted to us by ACT are "unreasonable."

Furthermore, with respect to the other 129 stations, ACT has made no showing "whether the station has afforded, or has plans to afford, an opportunity for the presentation of contrasting viewpoints," or even as to which stations broadcast the TIO announcement, except for the 21 which stated they had not aired it and the other seven which stated that they had broadcast it. We note that ACT did not forward the responses of the latter seven stations.

Assuming, *arguendo*, that the TIO announcements constituted advocacy of one side of a controversial issue of public importance within the meaning of the fairness doctrine, the mere fact that the announcement was sent to a station, or even that a station broadcast it, is insufficient indication that the licensee has failed to comply with the requirements of the fairness doctrine respecting that issue. Nor, in our opinion, does the receipt of the announcement, in and of itself, obligate

each licensee to demonstrate to the complainant and the Commission that it has complied with the fairness doctrine with respect to the issue.

We also note that although the complaint was purportedly based upon the fairness doctrine, ACT seems in some passages to be asserting an entirely different claim; namely, its right of access for its spot announcements, based upon the Court's decision in the *BEM* case, *supra*, and regardless of fairness considerations. Complainant seems to have an erroneous impression of the decision in that case. There an organization sought to buy time for spot announcements expressing its views on the Vietnam war. There was no evidence that the licensee had failed to comply with the requirements of the fairness doctrine regarding the War. The sole question was whether a licensee might adopt a policy flatly banning the sale of time for presentation of all controversial issues.

The Commission ruled that such a policy was within the licensee's discretion. The U.S. Court of Appeals for the District of Columbia Circuit reversed the Commission's ruling. The Circuit Court's decision is now on appeal to the U. S. Supreme Court, which has stayed the mandate of the lower court. Pending release of the Supreme Court's decision, the Commission's original policy determination remains in effect under the stay of mandate. Although some aspects of the questions raised in *BEM* are being considered by the Commission in its Fairness Inquiry, the Commission has made it clear that it intends to withhold any further declarations on the First Amendment aspect of the question until the Supreme Court rules on the *BEM* appeal.

For the reasons set forth above, the requests of the complainant ARE DENIED.

Commissioner Johnson concurring and issuing the attached statement.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

FROM TELEVISION INFORMATION OFFICE OF THE NATIONAL ASSOCIATION OF BROADCASTERS, NEW YORK

DO CHILDREN LEARN FROM TELEVISION?

(60 Seconds—Color AV-28)

AUDIO	
ANNC'R:	Do children learn from television?
1st GIRL:	I learned how to cook hamburgers.
1st BOY:	I learned about meteorite storms.
2nd BOY:	I learned about waterfalls, that the fish fall down and try to get back up.
3rd BOY:	You learn what's been happening in Texas with the drought or about the budget in New York City and other things.
4th BOY:	I saw a commercial about it and they said 285 kids died from drugs.
2nd GIRL:	I see shows on television about hospitals and I want to be a nurse when I grow up.
3rd GIRL:	You learn about pollution and what they're doing about it.
5th BOY:	On television you learn about other people's customs.

1st GIRL: I learned about three specific things I'm never going to take—alcoholism, smoking and bad drugs.

ANNC'R: Do children learn from television? What do you think?

August 1971

Because this, like previous TIO spots, has been produced on your behalf, it is not necessary to identify TIO on the air. A letter from the NAB Legal Department to this effect has been distributed to stations.

ACTION FOR CHILDREN'S TELEVISION—DECEMBER 1971

SCRIPT (TO BE READ WITH 3 SLIDES) TIME: 30 seconds

PUBLIC SERVICE ANNOUNCEMENT

(Response to announcement from Television Information Office on Children's TV aired earlier)

	Announcer:
Slide A: Children watching TV.	"Did you know that on children's television there are twice as many commercials as on adult prime-time shows?"
Slide B: Shot of girl's face.	"Children spend more time in front of a television set than in any other activity besides sleep. And most of their programs are repetitive violent cartoons."
Slide C: Logo for ACT's address.	"If you'd like to learn more about how to get better children's TV on the air, write Action for Children's Television, 46 Austin Street, Newtonville, Mass. 02160. You *can* help."

CONCURRING STATEMENT OF COMMISSIONER NICHOLAS JOHNSON

The Commission today denies the complaint of Action for Children's Television concerning the actual or conjectured broadcast, over some or all of 133 television stations in the top 25 markets, of a one minute Television Information Office spot announcement that purported to answer the question "Do Children Learn From Television?" Since TIO is essentially a publicity organ of the broadcasters, the answer was not only in the affirmative, but contained, moreover, the clear implication that what children learn from television is healthy, benevolent and finger-lickin' good.

ACT claims the spot is taking one side of a controversial issue of public importance, and with that contention I most heartily agree.

But the fairness doctrine does *not* prohibit the *presentation* of spots like the TIO commercial—or any other. It *does* require that broadcasters permit all points of view regarding controversial issues like that involved in the TIO spot. Whether individual broadcasters have done so is the issue before us.

I am therefore concurring with the dismissal of the complaint on procedural grounds, because I do not believe ACT has provided sufficient information on any individual station's response to form a rational judgment as to whether a fairness doctrine violation has occurred.

If public interest and community groups are to use effectively the few powers they have gained before this Commission, it is important

that they observe a few procedural rules that have been established as much for their benefit as for ours. It is not enough for a group like ACT simply to allege the controversiality of an issue. As in any administrative or judicial proceeding, certain actions or omissions on the part of the broadcaster must also be alleged in order to give the Commission some jurisdiction over what are, after all, the First Amendment rights of the broadcaster. The Commission clearly has the Constitutional authority to regulate the programming of a licensee in matters concerning the fairness doctrine. *Red Lion Broadcasting Co., Inc.* v. *F.C.C.*, 395 U.S. 367 (1969). But if we are to do so cogently we must be presented with more facts than ACT has given us in this case. If ACT had not used such an overly-enthusiastic "shotgun" approach, but had concentrated instead on building a more detailed case against one or two stations, they could conceivably have established a valuable precedent before the Commission (or in the Courts), which could then have been wielded to gain some legal leverage on this issue against other broadcasters.

Although the Commission majority refused to reach the controversiality of the issue ACT is seeking to discuss, I think there can be no question but that the TIO spot presented one side of a controversial issue of public importance. There is little doubt as to the existence of the controversy that rages today over the effects of television, and especially commercial television, on the growth and development of our nation's children. The controversy is not necessarily over the question "Do children learn * * *" but over precisely *what* they learn—intellectually, emotionally and psychologically. One need only examine the extensive literature linking television to violence and other social problems to understand the concern of ACT and groups like it.[1]

The upbeat tone of the TIO spot, the enthusiasm of its examples and the various statements made by TIO in its newsletters urging the stations to carry the spot are all designed to underscore the benevolence of the one eyed monster. As this Commission has heard in the course of many hours of oral argument in a major docket devoted exclusively to children's television, however, that is no more than an industry viewpoint, widely and ferociously disputed by an ever-increasing number of concerned Americans—parents and professionals alike. This Commission could not afford to treat lightly a complaint such as this one, if only it allowed us the opportunity to scrutinize more carefully the record and response of the individual station.

[1] See, *e.g.*, *Television and Growing Up: The Impact of Televised Violence, Television and Social Behavior*, and the *Surgeon General's Scientific Advisory Committee on Television and Social Behavior* from which they are derived; *Violence and the Media*, a staff report to the *National Commission on the Causes and Prevention of Violence; Television and Juvenile Delinquency*, Report of the Subcommittee to Investigate Juvenile Delinquency, 88th Congress, 2d Session.

F.C.C. 73-184

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
APPALACHIAN RESEARCH AND DEFENSE FUND, INC.
For Review of Ruling Concerning Fairness Doctrine Re Mountaineer Sports Network

FEBRUARY 14, 1973.

JOHN L. BOETTNER, Jr., Esq.,
Appalachian Research and Defense Fund, Inc., 116-B Kanawha Blvd., E., Charleston, W. Va.

DEAR MR. BOETTNER: This is in reply to your application for review of the Broadcast Bureau's ruling of December 8, 1971, that Section 315—fairness doctrine obligations do not apply to the Mountaineer Sports Network (hereinafter referred to as MSN). The ruling concerned your contention that primary responsibility for satisfaction of the fairness doctrine regarding your complaint about the broadcast of commercial announcements on behalf of the West Virginia Coal Association [1] rests with MSN [2] as the actual broadcaster of the announcements in question rather than the individual licensees that carried the broadcast. The Broadcast Bureau ruled that in view of the very limited nature of the programming by MSN, it would not be appropriate to turn to the network for satisfaction of any fairness doctrine requirements which might be bound to flow from the broadcasts complained of; that the primary fairness requirement is upon the licensee who may have carried, or has plans to carry, particular programs relating to the issue different from those of other stations in the network; and that in the area of a network as narrowly specialized and seasonal as MSN, it seems preferable to focus upon the individual station's compliance with fairness to ensure that all licensees who broadcast a controversial issue of public importance comply with the fairness doctrine.

Your application for review first sets forth the following issue: whether a "network broadcaster" may be legally exempted from Section 315 obligations solely because its programming is of a limited nature.

[1] The complaint alleged that the West Virginia Coal Association commercial advertisements broadcast by MSN raised and presented one side of controversial issues of public importance in West Virginia concerning coal mine health and safety, the environmental effects of coal mining and strip mining and the socio-economic effects of the coal mining industry.

[2] You state that the "Mountaineer Sports Network is an affiliation of over twenty West Virginia radio stations for the singular purpose of broadcasting the play-by-play activities of West Virginia football and basketball games," and is owned and operated by West Virginia University.

You state that the Bureau's position is objectionable on the basis of statutory interpretation of 47 U.S.C. 315 because the statutory sanctions are invoked against "broadcasters" per se, without limitation, and this is further reinforced by administrative action of the F.C.C. itself in *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 Fed. Reg. 10415 (1964), wherein the F.C.C. gave notice of the specific application of the fairness doctrine to "* * * any case in which broadcast facilities are used for the discussion of a controversial issue of public importance." You further state that the scope of fairness in both the above cited instances is said to include all broadcasters, without limitation; that the Bureau would now attempt to limit the scope of fairness to exclude "narrowly specialized and seasonal" broadcasters in view of the "limited nature of the programming"; that such a limitation is plainly contrary to the intent and letter of the Communications Act; that your interpretation of the statutory language is supported by substantive reasons in that the programming of any broadcaster is limited, frequencies in the radio spectrum are limited, and broadcast time within any given frequency is limited, and that any difference between broadcasters in the range of their programming is one of degree and not of kind. Your application for review alleges that the Bureau's rationale serves to set the stage for increased curtailment of the fairness doctrine's scope of application; that the national networks could take the whole of their programming and splinter it into specialized parts which would fall beyond the purview of fairness; that the party seeking fairness time must then deal separately with each affiliate licensee of the network; and that this places an unequal burden on the party because the network is available only to the advertiser, not to the party seeking fairness reply time. You contend that the rationale of *Letter to Blair Clark*, 11 F.C.C. 2d 511 (1968), covers the instant case and should not be distinguished therefrom.

The response of MSN to your application for review states that you fail to cite any authority for your position that the Commission has jurisdiction over an entity such as the network; that there is nothing in the Communications Act of 1934, as amended, which specifically grants such jurisdiction; and that the Commission has no obligation to make it procedurally convenient for the Fund by by-passing its licensees. The network contends that to apply the fairness doctrine to the limited network would involve an extension of the doctrine which is not warranted; that the Commission cannot reach networks directly or advertisers, producers, sponsors and others who in one capacity or another are associated with the presentation of radio or television programs; and that the rationale for this jurisdictional limitation lies in the fact that Section 3(h) of the Communications Act provides that a person engaged in radio broadcasting shall not be deemed a common carrier and, therefore, it is the responsibility of the licensee to select broadcast material which fulfills public interest.

MSN contends that you ignore the first portion of Section 315 of the Communications Act which talks in terms of the obligations of the "licensee," and that the incidental use of the word "broadcasters" later in Section 315 was clearly one of convenience; that nothing in

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Section 2 of the Act, which deals with jurisdiction and application of the Act's provisions, would warrant a conclusion that Section 315 is to be applied to "broadcasters" rather than licensees of the Commission; and that there is nothing in *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance* which warrants a conclusion that the fairness doctrine should be applied to non-licensees of the Commission. The network further contends that the Commission has consistently followed a policy of imposing upon the individual licensee the responsibility of complying with the fairness doctrine and there is nothing in Commission policy statements which indicates that it will or can extend the responsibility for enforcement of the doctrine to groups, associations, limited networks, and other non-licensed entities.

MSN states that *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367 (1969), merely set forth the obligations of the licensees with respect to the fairness doctrine and it does not even contain dicta as to whether non-licensees can be looked to for enforcement of the doctrine. The network further contends that your reliance on *Letter to Blair Clark* is misplaced because there the Commission pointed out that Section 315 obligations attach to individual station licensees and the reason it accepted the complaint against the network in that case was that the complaint was based on a network program and it noted that the networks involved were licensees of their owned and operated broadcast stations. MSN states that it did not create or develop the announcements being complained of and it is not the licensee of any broadcast station; that it is not necessary to determine whether the Commission would have taken the national network to task in *Blair Clark* if the national network had not been a licensee because MSN, unlike a national network, has no continuous series of programs and has the extremely limited function of arranging for the broadcasting of certain sports of West Virginia University at certain times of the year; that it could not fulfill fairness doctrine obligations because it does not have the means for presenting regularly scheduled news, discussion, or interview programs in order to guarantee a balanced presentation of controversial subjects; and that it does not have the power or authority to require the participating stations to adhere to the fairness doctrine requirements.

The network states that the instant case is similar to the factual situation in *Phillip H. Schott*, 29 F.C.C. 2d 35 (1971), where the Commission refused to apply the fairness doctrine to a broadcast pool consisting of five stations that carried a political speech, pointing out that the pool was not a licensee and adhering to its policy of imposing upon the individual licensee the responsibility of complying with the fairness doctrine.

In reply to the response of MSN, you contend that its argument that you fail to cite any authority for the Commission's jurisdiction over the network as a non-licensed entity ignores the holding in *Letter to Blair Clark* that although Section 315 obligations attach to individual station licensees, where a complaint is based on a network program and addressed to a network organization, the Commission has always accepted this approach as a basis for issuance of a ruling on the matter.

You state that the issue is not one of jurisdiction of the Commission, but the irrational distinction drawn between the network organization in *Letter to Blair Clark* and the network in the instant situation; that to exempt MSN from Section 315 obligations because of the limited nature of its programming is unlawful and unauthorized since the Commission is without authority to grant such exemptions, even to networks of a limited nature; that there is no dispute that MSN is a broadcaster within the meaning of Section 315; that the network produces its own program, announcements and commercials which are carried over the entire network; that the affiliate stations merely receive the network broadcasts and relay them to their area listeners; and that except for the opportunity of presenting local commericals, the affiliate stations have no control over MSN or its programming. You contend that although the network is not a licensee of the Commission, the fact that it is not licensed is not to be construed as a grant of immunity from the fairness doctrine and that once the network, as a broadcaster, whether licensed by the Commission or not, begins to use its broadcast facilities for the discussion of controversial issues of public importance, the fairness doctrine attaches.

You further state that the contention by MSN that it is unable or without authority to satisfy any Section 315 obligations is without merit because the network could easily fufill its obligation under the fairness doctrine by incorporating into its regular programming a series of spot announcements covering the opposing viewpoints; that *Phillip H. Schott* is distinguishable from the instant case because the *Schott* case only involved five stations whereas twenty-seven stations are affiliated with MSN; and that the *Schott* case apparently involved only one controversial speech, whereas the Coal Association has saturated the State of West Virginia with controversial commercials to which the fairness doctrine applies.

Your response of March 1, 1972, to the reply to MSN to your application for review stated, "The issue here is not one of the jurisdiction of the F.C.C. Rather, the basis of the Application for review is the irrational distinction drawn between the network organization in *Letter to Blair Clark* and the Mountaineer Sports Network in the instant situation." However, your prior letter of November 17, 1971, to the Commission stated that it remains the position of the complainants that the primary responsibility for satisfaction of the fairness doctrine rests with the MSN as the actual broadcaster of the West Virginia Coal Association advertisements, and you requested the Commission to assert jurisdiction over MSN. Thus, the Broadcast Bureau's ruling of December 8, 1971, was specifically addressed to your request that the Commission assert jurisdiction over MSN.

The Broadcast Bureau ruling of December 8, 1971, stated that the primary fairness requirement is upon the licensee, who may have carried, or has plans to carry, particular programs relating to the issue different from those of other stations in the network; that no particular program or program series is required to comply with the fairness doctrine; that it is the licensee's overall programming which is looked to; and that in the area of a network as narrowly specialized and seasonal as MSN, it seems preferable to focus upon the individual

station's compliance with fairness to ensure that all licensees who broadcast a controversial issue of public importance comply with the fairness doctrine.

As set forth above, in *Letter to Blair Clark* the Commission, in a footnote, stated, "Although Section 315 obligations attach to individual station licensees, where a complaint is based on a network program and addressed to a network organization, as here, the Commission has always accepted this approach as a basis for issuance of a ruling on the matter. Additionally, it may be noted that each of the networks involved herein are licensees of their 'owned and operated' broadcast stations." The Bureau's ruling of December 8, 1971, also noted that the instant situation involving MSN differs from *Blair Clark* because there the networks involved broadcast a full range of programming, including programs dealing with controversial issues. Your application for review contends that the rationale of *Blair Clark* covers the instant case and should not be distinguished therefrom. However, the distinctions you point out concerning the number of stations, etc., do not bring the instant case within the above quoted rationale involved in *Blair Clark*, and we believe that the policy enunciated in *Phillip Scott* may appropriately be applied here, since the programming of the Mountaineer Sports Network is narrowly specialized and seasonal, and MSN is not a network in the sense in which that term was used in *Blair Clark*, in that it presents only occasional feeds of sports events and does not broadcast a regular schedule of programs, such as news, discussion, debate or commentary programs.

On the basis of the above, your application for review IS DENIED.

Commissioners Burch, Chairman; and Johnson concurring in the result; Commissioner Reid absent.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73-167

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 15.309 OF THE COMMISSION'S RULES PERTAINING TO EMISSION LIMITATIONS FOR CERTAIN FIELD DISTURBANCE SENSORS	Docket No. 19685 RM-2000

NOTICE OF PROPOSED RULEMAKING

(Adopted February 14, 1973; Released February 20, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. Notice is hereby given of proposed rulemaking in the above entitled matter.

2. The Commission has received a Petition for Rulemaking[1] from the Emergency Products Corporation, 60 Lafayette Street, Newark, New Jersey, requesting modification of the emission limitations for field disturbance sensors, a type of restricted radiation device regulated by Part 15, Subpart F, of our Rules. These devices provide an alarm or signal when an object perturbs an electromagnetic field, generated by the device, due to the relative motion or presence of such an object. Operation of field disturbance sensors is permitted on all frequencies provided that the field strength of any emissions emanating from the device shall not exceed 15 microvolts per meter at a distance of $\lambda/2\pi$ meters (equal, when measured in feet, to 157 divided by the frequency in MHz). Additionally, operation on certain frequencies is permitted at an increased value of field strength in accordance with the following schedule:

Frequency (in MHz):	*Field strength (at 100 feet)*
915 2450 5800	50,000 microvolts per meter.
10,525 22,125	250,000 microvolts per meter.

However, our Rules require that the spurious emissions (including harmonics), of devices operating on the frequencies specified in the above schedule, be suppressed at least 50 dB below the level of the fundamental but not below 15 microvolts per meter at 100 feet.

3. The petitioner has simultaneously tendered a request for waiver of the Rules looking to the grant of certification for the Emergency Products Corporation Model MW-1[2] field disturbance sensor which

[1] RM-2000, Filed: June 6, 1972.
[2] Application for certification filed June 7, 1972.

does not comply with the spurious limits as presently specified in § 15.309 of our Rules.

4. The petition which the Commission received from the Emergency Products Corporation requests a modification of § 15.309(b) to permit a higher level of spurious radiation than is currently permitted for field disturbance sensors operating above 10 GHz. Comments on this petition were received from the Security Equipment Industry Association (SEIA) and the Central Station Industry Frequency Advisory Committee (SIFAC) supporting in part and opposing in part the Emergency Products Corporation Petition for Rule Making.

5. Emergency Products Corporation makes several arguments in support of its request for a relaxation of the field strength requirements for harmonics. It points out that the majority of these devices are used within a closed structure and the attenuation of conventional walls at these frequencies is so large that there exists an extremely low probability that interference will be caused to other radio services operating outside the structure. The Petitioner argues further that there is no economically practicable means of complying with the above technical standard and that a filter to achieve the required level of suppression would cost approximately $325, which is far more than the total anticipated selling price of the Petitioner's sensor. Petitioner alleges that certain sensors certificated by the Commission do not comply with the present requirements. The Petitioner bases this allegation on measurement data provided by the General Electric Company.[3] Emergency Products Corporation requests that, for sensors designed to operate at 10,525 and 22,125 MHz, the suppression of spurious emissions excluding harmonics be left unchanged at 50 dB below the field strength of the fundamental. However, for harmonics of the fundamental, E. P. C. requests that the suppression requirement be changed to permit a power level of 50 uW (measured at the antenna terminals of the sensor).

6. The comments received from the Security Equipment Industry Association (SEIA) supports the Emergency Products Corporation contention that implementing the present regulations is not economically practical and states that the measurements required to demonstrate compliance with our rules are extremely difficult to make requiring extremely elaborate and expensive test equipment. SEIA also states that the probability of interference from these sensors is low due to the attenuation characteristics of buildings and walls at these frequencies and because highly directive antennas are typically used. SEIA recommends that spurious and harmonics be suppressed 30 dB below the level of the fundamental except that suppression below a level of 10 uW not be required.

7. The Central Station Industry Frequency Advisory Committee submitted comments which support the position taken by SEIA concerning the level of spurious emissions and the 10 uW level below which suppression of spurious signals would not be required.

[3] This data was obtained in the course of the development of a bulk-effect diode oscillator for the MW-1 field disturbance sensor, during which development the General Electric Company had occasion to evaluate a number of such devices.

COMMISSION PROPOSAL

8. The Commission recognizes the need for security devices of this type, especially in areas experiencing a high crime rate. We anticipate that as the public recognizes the protection that this type of device affords, the number of units in operation and the potential for interference will increase. Consequently, we are reluctant at this time to permit spurious radiation at harmonic frequencies to be increased to the extent requested by Emergency Products Corporation. Further, a review of Commission records indicates that, while no applications for certification of devices operating at 22,125 MHz were received, a number of manufacturers have satisfactorily performed measurements and met the spurious limits required (§ 15.309) for purposes of certification at 10,525 MHz.

9. We are not persuaded by the arguments presented by the petitioner and other respondents to establish the spurious limit in terms of power at the antenna terminals of the device. The spurious signal level at the antenna, in most cases, is modified by the directional characteristics of the antenna and other factors. The use of field strength is considered a better measure of the interference potential of emissions. The Commission proposes to continue to regulate spurious emissions of devices that operate under Part 15 by specifying limitations in terms of field strength.

10. The Commission has carefully considered the recommendation put forth in the Emergency Products Corporation's Petition, comments received concerning this petition, certification data on file and applicable information contained in an earlier proceeding concerning field disturbance sensors.[4] It also is recognized that electromagnetic energy at these frequencies (above 10 GHz) is rapidly attenuated by most materials, is readily used with directive antennas and exhibits line of sight transmission characteristics.

11. In view of these considerations, we proposed to amend Part 15 of the Rules to modify § 15.309(b) and add a new paragraph (c) as follows:

§ 15.309 Emission limitations.

* * * * * * *

(b) Spurious emissions from sensors operating in bands centered on 915, 2,450 and 5,800 MHz, including emissions on harmonics shall be suppressed at least 50 dB below the level of the fundamental; however, suppression below 15 microvolts per meter at 100 feet is not required.

(c) Spurious emissions from sensors operating in bands centered on 10,525 and 22,125 MHz, including emissions on harmonics, shall be suppressed at least 40 dB below the level of the fundamental; however, suppression below 2,500 microvolts per meter at 100 feet is not required.

NOTE: Measurement techniques may not be capable, at this time, of accurately measuring spurious emissions at the levels required by this rule.

[4] Report and Order, Docket 13863, adopted August 18, 1971; FCC 71-873, 31 FCC 2nd 210 (36 FR 16907, August 26, 1971).

Therefore, measurements of spurious emissions above 40 GHz to levels commensurate with the state of the art in measurement techniques are acceptable.

12. We are greatly concerned about the allegation made by Emergency Products Corporation and other sources concerning the matter of non-complying sensors. This aspect of the petition is not pertinent to the basic request made by Emergency Products Corporation and will not be considered in this proceeding, but will be investigated separately by the Commission.

EMERGENCY PRODUCTS CORPORATION'S REQUEST FOR WAIVER OF RULES

13. As indicated above, the Commission does not propose to permit field disturbance sensors to operate with spurious signals at the level specified by the petitioner. Under these circumstances, it is pointless to permit the sale and manufacture of devices which do not comply with our present rules or the revision proposed herein, and for which there is no prospect of compliance at a future date. The Commission cannot, therefore, find it in the public interest to grant the request of Emergency Products Corporation for waiver of our rules to grant certification for its non-complying MW-1 field disturbance sensor. The said request for waiver therefore IS DENIED.

14. Authority for the adoption of the Rules herein proposed is contained in Sections 4(i), 302, and 303(r) of the Communications Act of 1934, as amended.

15. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before March 28, 1973, and reply comments on or before April 6, 1973. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision on the Rules which are proposed herein, the Commission also may take into account other relevant information before it, in addition to specific comments invited by this Notice.

16. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and 14 copies of all statements, briefs, or comments shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its Headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-177

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202, TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (JESUP, GA.; ORLEANS, MASS.; GLADEWATER AND KILGORE, TEX.; AND MIDLAND, MICH.)	Docket No. 19525 RM-1819, RM-1831 RM-1828, RM-1835

REPORT AND ORDER

(Adopted February 14, 1973; Released February 20, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has before it for consideration the four FM channel assignment proposals upon which Notice of Proposed Rule Making was released herein on June 19, 1972 (FCC 72-514, 37 Fed. Reg. 12406), in response to requests of petitioners. The channel assignments proposed are as follows:

RM-1819 Channel 252A to Jesup, Georgia
RM-1828 Channel 284 to Orleans, Massachusetts
RM-1831 Channel 240A to Gladewater, Texas
RM-1835 Channel 228A to Midland, Michigan.

The proposals are unrelated and will be discussed and dealt with seriatim below. Population figures are from the 1970 U.S. Census reports unless otherwise specified.

RM-1819, JESUP, GA.

2. Channel 252A is proposed for a second FM assignment to Jesup, Georgia (population, 9,091), seat of Wayne County (population, 17,858), by R. B. Forehand (petitioner). The existing Jesup FM assignment, Channel 288A, is occupied by Station WIFO-FM, whose licensee, Jesup Broadcasting Corporation, is also licensee of the only other aural broadcast outlet at Jesup, Station WLOP, a daytime-only standard broadcast station. The supporting comments received from the petitioner on the proposal advise that if the proposed assignment is made to Jesup, he will apply for it and, if authorized, promptly build and place a new station in operation. No opposing or other comments on the proposal were received.

3. Channel 252A is technically feasible for a Jesup assignment since it can be assigned in full conformance with the minimum mileage separation requirements of the rules without requiring any other changes in FM assignments. The proposed assignment is also not objectionable because of its preclusionary effect upon new assignments elsewhere since such assignments would be foreclosed only on Channel

252A and in only an area in Georgia where there are three communities, one of which (Brunswick, population, 19,585), while larger than Jesup, already has two Class C FM assignments, and the other two (Darien, population, 1,826; and Ludowici, population, 1,419) are both small and, being no more than 15 miles from Jesup, could be served by a Jesup Channel 252A station. In fact, the petitioner stressed in his showing that an added advantage of his proposal is that a Channel 252A outlet at Jesup would not only serve Jesup and Wayne County but also Ludowici, the seat of Long County (population 3,745), as well as over half of Long County, which is presently without a local broadcast outlet or assignment.

4. It also appears from the information furnished by the petitioner, which has already been adequately discussed in the notice issued on his proposal, that Jesup is the cultural and economic center for Wayne County's activities; that his survey indicates public interest for a second local FM outlet at Jesup; and that this area has unsatisfied religious and other broadcast programming needs which an additional local aural outlet could satisfy or alleviate. His showing also indicates that conditions are favorable for a second FM outlet at Jesup from the standpoint of its growth trend in population, which has quadrupled since 1920, and its economy.

5. In view of the above, we believe that adoption of this unopposed FM channel proposal for Jesup is warranted and that the public interest will be served in thus enabling the public in the Jesup area to have additional local aural broadcast service from a second source.

RM–1828, ORLEANS, MASS.

6. The petitioner, Seashore Broadcasting Co., Inc. (Seashore), proposes the assignment of Class B Channel 284 to Orleans, Massachusetts (population, 3,055), for a first FM assignment. This community is centrally located in what the petitioner describes as the lower (outer) Cape area, as opposed to the upper (inner) Cape area, of Cape Cod, all of which (lower and upper) constitutes Barnstable County (population, 96,656). Station WVLC, a daytime-only AM broadcast station, licensed to Seashore, is the only aural broadcast outlet in Orleans and the only such outlet in the lower Cape area of Cape Cod at present. Because of the nighttime protection requirements for Station WWVA (AM), Wheeling, West Virginia, Seashore states that its Orleans AM station can never be authorized to provide a full-time local broadcast service to the lower Cape area and that it seeks the proposed FM assignment in order to provide Orleans and this area with a first full-time and nighttime local broadcast service. Besides Station WVLC, Barnstable County also has one unlimited-time AM broadcast station and four Class B FM stations, as well as an available Class A FM assignment, all located in the upper Cape area.[1]

[1] These stations are WDCB(AM), West Yarmouth, and FM Stations WQRC, Barnstable; WCIB, Falmouth; WCOD, Hyannis; and WOCB–FM, West Yarmouth. The available FM assignment is Channel 240A, assigned to Falmouth, and formerly occupied by Station WUCV, the permit for which was cancelled and the call letters deleted on July 27, 1972. An application (BPH–8206), filed December 12, 1972, for the Falmouth Channel 240A assignment by Frances E. Doddario, is pending.

7. Seashore filed supporting comments and reply comments on its proposal in which it advises that it will apply immediately for the proposed assignment, if made, and will construct and operate on it, if authorized. Comments in opposition to the proposal were filed by Cape Cod Broadcasting Company, Inc. (Cape Cod Broadcasting), licensee of Station WQRC–FM (Channel 260), Barnstable, Massachusetts, which also opposed rule making on the Seashore proposal, and by Kotcom Broadcasting, Inc. (Kotcom), licensee of Station WCOD–FM (Channel 291), Hyannis, Massachusetts. Both opponents alternatively propose that, if Orleans is deemed to warrant an FM assignment, a Class A channel rather than the proposed Class B channel be assigned, with Cape Cod Broadcasting proposing Channel 280A for the Class A assignment.

8. Either Class B Channel 284 or Channel 280A can be assigned to Orleans in conformance with all minimum mileage separation requirements without requiring any other changes in channel assignments and without adverse preclusionary effect on future assignments on either channel or on the six pertinent adjacent channels to communities in the immediate area because these channels are already precluded from assignment by existing stations. Our preclusionary study and those of the parties also indicate that the most efficient possibilities for use of either channel is in the lower Cape area since, while much of the signal of a station on either FM channel in this area would be over water, even more of their signal would go out to sea in any other technically feasible location. They further indicate that the only likely possibilities for use of either channel is in the lower Cape area and that, if the channels are not used there, they may never be used at all. This being the case, we do not feel the opponents are on sound ground in arguing that an additional FM assignment should not be made to Cape Cod to provide a first local outlet in the lower Cape area because, with five FM channels assigned (all in the upper Cape area), Cape Cod already has its fair share of the available FM channels. This argument might well be a dispositive reason for denying an assignment proposal in a case where there is evidence of a competing demand or a present or developing future need for use of the requested assignment elsewhere. It is not, however, in our judgment, a justifiable public interest reason for denying a requested and technically feasible assignment which would otherwise be likely to remain unused, as appears to be the case here, if it would serve a need.

9. Seashore's showing, we believe, sufficiently demonstrates that the assignment of a first FM channel to the lower Cape area for a first full-time local aural outlet and locally-oriented FM service would serve a need, especially for a first local broadcast nighttime service to this area. The lower Cape area, like the rest of Cape Cod, has experienced considerable population growth and economic expansion in recent years and 1970 Census figures show that its residents number approximately one-third of those residing on Cape Cod, yet, unlike the upper Cape area, which has five FM assignments, four of which are occupied, it is without even one FM assignment or a full-time AM outlet which could be used to meet the special local needs and interests of the permanent residents and of visitors to the outer Cape Cod area.

Some of the needs of the lower Cape area for a full-time local broadcast outlet were detailed in Seashore's showing and discussed in the notice issued on its proposal. They include a need for a forum for public discussion of local problems; a facility to provide news, information on matters vital to the public, weather advice, traffic notices, and advertising by and information for the benefit of commercial interests and recreational activities, and coverage of local sports in the evening; and a means for the different and widely-separated communities on the lower Cape to communicate with each other about their manifold interdependent problems. While the opponents contend that the FM stations in the upper Cape area are centrally located on Cape Cod and are oriented and programmed to Cape Cod, and not to the mainland, as Seashore claims, and that they as well as two Plymouth, Massachusetts, FM stations, provide ample service to the lower Cape area, they do not allege or show that any of these stations are primarily oriented to serving the local needs of the lower Cape area, as a local FM outlet in that area could do. Unquestionably, we believe, the public in the lower Cape Cod area would benefit from having a first full-time local broadcast outlet and service, notwithstanding the other aural services available in the area from stations in upper Cape Cod and other areas.

10. Kotcom also expresses concern that the assignment of another FM channel to Cape Cod will cause economic hardships to existing stations on Cape Cod, possibly resulting in the demise of one or more of them, but makes no showing which would permit evaluation of the basis for this concern. As we pointed out in the Notice, in discussing a like assertion of Cape Cod Broadcasting, the economic impact question is normally and more appropriately considered in passing upon a specific application for use of a new assignment rather than in rule making proceedings, and this appears particularly appropriate in this case since the Cape Cod area is rapidly expanding and any information concerning the economics of broadcasting on Cape Cod at the time this rule making proceeding is in process will quickly become invalid and inappropriate. In any case, the assertions of the opponents are clearly insufficient to permit a determination as to whether the alleged adverse economic effect of another FM station in the lower Cape area of Cape Cod is likely to cause diminution or destruction of overall program service to the public. In the absence of such a showing, we would not deny an application for a new station or an assignment proposal on economic impact grounds, since, as we have stated before, it is not our function to place artificial restraints upon competition unless the overall public interest would be adversely affected thereby.

11. Since we are satisfied that an FM assignment would have public benefit and serve a demand and need for local service in the lower Cape area and that either Channel 284 or Channel 280A would be technically feasible for such an assignment, we think one should be provided. Cape Cod Broadcasting, however, questions why Orleans should be preferred for the assignment when there are three other communities in the lower Cape area, all larger than Orleans—

Chatham, with a population of 4,554; Dennis, with a population of 6,454, and Harwich, with a population of 5,892—where Channel 284 (and also Channel 280A) would also be technically feasible for assignment and use. It, however, furnishes no evidence to indicate any demand or interest in establishing an FM station in any of those communities. On the other hand, based on the indicated interest and intent of Seashore in this record, there does appear every likelihood that an Orleans FM assignment would be applied for and used, if authorization is obtained. The record also provides no basis for assuming that Orleans would not be a desirable community for originating a full-time aural broadcast service to the lower Cape area since it is centrally located therein and alleged by Seashore to be the commercial hub and the principal shopping center for the outer Cape area. It also appears that since the communities of Chatham, Dennis and Harwich are within 15 miles of Orleans, the assignment of Channel 284 to Orleans would not preclude use of the channel for a local outlet in any one of them instead of Orleans.[2] A Channel 280A assignment to Orleans would also be available for application and use to Chatham or Harwich instead since they are no more than 10 miles from Orleans.[2] We therefore, think that, on balance, there is sound basis for making an assignment to Orleans. For reasons mentioned below, we believe the channel assigned should be 284.

12. The opponents feel that, if an FM channel is to be assigned to Orleans, there is no justification for providing a wide coverage Class B assignment, such as requested Channel 284, since a Class A assignment, such as Channel 280A, alternatively proposed by Cape Cod Broadcasting, would have the least impact on other assignments, can be assigned and is customarily assigned to smaller cities, such as Orleans, absent technical or service to unserved area considerations. We think that justification does exist for preferring Channel 284 over Channel 280A for the assignment since it could provide a second FM service to the Truro area of the lower Cape region, which now receives FM service only from Cape Cod Broadcasting's FM station at Barnstable (WQRC–FM), whereas an Orleans Channel 280A assignment would not. In addition, in light of the technical considerations discussed in paragraph 8, and the availability of an Orleans Channel 284 assignment for application and use in the larger communities of Chatham, Dennis, or Harwich (whereas Channel 280A at Orleans could only be used in Chatham or Harwich), there appears no valid reason for not making use of this Class B channel at this time.

RM–1831, GLADEWATER, TEX.

13. The petitioner, Orman L. Kimbrough, proposes the assignment of Channel 240A to Gladewater, Texas (population, 5,575), for a first FM assignment by reassigning Channel 240A from Kilgore, Texas (population, 9,494), where it has been assigned but never occupied since 1964, to Gladewater. No replacement for the Kilgore Channel 240A assignment, the only FM channel there assigned, was proposed.

[2] See § 73.203(b) of the Commission's Rules.

Brief supporting comments were filed by the petitioner which incorporate his prior petition on the proposal and reaffirm that he intends to apply for use of the proposed Gladewater assignment if it is made. Comments opposing the proposal were filed by Floyd W. Addington and Thomas H. Spurlock, d/b/as Kilgore Broadcasting Company (Kilgore Broadcasting), which inform that they plan to apply for use of Channel 240A at Kilgore in the very near future. Subsequently, on August 23, 1972 (Public Notice No. 87950), Kilgore Broadcasting tendered for filing an application for the Kilgore Channel 240 assignment.

14. Gladewater and Kilgore are located in the northeastern part of Texas on the boundary of Gregg County (population 75,929) and are both largely contained within that county, with Gladewater located about 11 miles north of Kilgore. While both communities are without a local FM outlet, each has a local AM radio station. Gladewater has Station KEES, a daytime-only operation, licensed to the petitioner, who seeks the proposed FM assignment there in order to provide Gladewater with a first local nighttime aural service also. Kilgore has Station KOCA, an unlimited-time operation, licensed to Radio Kilgore. There are also two other AM broadcast stations in Gregg County, Station KFRO, a daytime-only operation, and Station KLUE, both at Longview. The only FM station in the county, Station KHER (Channel 289), is also at Longview.

15. The opponents contend that the petitioner's case for moving Channel 240A from Kilgore to Gladewater rests solely on the fact that Channel 240A has been "lying fallow" while assigned to Kilgore; that he has offered no showing as to the entitlement of Gladewater over Kilgore to the channel for a first assignment; and that there is no justifiable reason now for moving Channel 240A from Kilgore to Gladewater since Kilgore is the larger community and their tendered application evidences that there is now demand for use of the channel at Kilgore by a serious applicant and prospect for Kilgore to have a first local FM service and a choice of two full-time aural services from different sources. They urge that the petitioner's proposal for use of the channel at Gladewater, where he operates the only existing local aural outlet, would make no contribution in terms of bringing in new competition and of providing for a healthy diversity in broadcast ownership and operations in the area.

16. While Kilgore would normally warrant a first FM assignment over Gladewater on the basis of size, we felt it in the public interest to consider the petitioner's unopposed reassignment proposal in rule making, considering that Channel 240A has been assigned to Kilgore since 1964 and there still appeared no evidence of any interest in using the channel for a local FM service there; that Kilgore has an unlimited-time local AM station, and that, by reassigning Channel 240A to the nearby community of Gladewater, where interest for use of the channel was evidenced by the petitioner's showing, it would be possible for Gladewater to have a first local FM outlet and a first local nighttime aural service and to provide Kilgore with FM service also. We now believe, however, in view of this record and the pending application for the Kilgore Channel 240A assignment which clearly demonstrate an interest and demand in using Channel 240A at Kilgore (where, in addi-

tion to meeting the need of that community for a first local FM service and a choice of full-time aural services, it can provide service to Gladewater as well) that, on balance, our assignment objectives and the public interest are best served by retaining the channel in the larger community of Kilgore at this time. Should it later appear, however, that there is undue delay in activating the channel at Kilgore because of lack of diligence in prosecuting an application for the channel or in building an authorized station, we would consider a further petition to move the channel to Gladewater to serve a need there, for it does not appear that another FM channel could be assigned there without foreclosing future development of educational FM facilities in this area.

RM–1835, MIDLAND, MICH.

17. Channel 228A is proposed for a second FM assignment to Midland, Michigan (population, 35,176), seat of Midland County (population, 63,769), by the petitioner, Wolverine Radio Company. The existing Midland FM assignment, Channel 259, is occupied by Station WSVC, licensed to Habco, Inc. Midland also has an unlimited-time AM broadcast station, Station WMPX, licensed to Patten Broadcasting Co., Inc. The supporting comments filed by Wolverine state that if the proposed assignment is made, it will promptly apply for its use to provide Midland with a second local FM service. No opposing or other comments on the proposal were received.

18. Midland is of a size to qualify for a second FM assignment under the usual criteria applied in such cases, even for a Class C assignment, since one is already assigned, and we believe it sound assignment policy to avoid the intermixture of classes of FM assignments in the same community. However, it does not appear that there are any unassigned Class C channels which would be technically feasible for assignment and use at Midland. Channel 228A, however, can be assigned and we believe, used effectively at Midland in conformance with all minimum mileage separation and other technical requirements of the Commission's rules without affecting any presently assigned channel. The preclusionary effect of the proposed assignment upon future assignments elsewhere would also be negligible since it would preclude new assignments only on Channel 228A in a limited area, and the six pertinent adjacent channels would not be affected. Further, the information furnished by the petitioner concerning the economy of Midland, the considerable number of industrial facilities and educational institutions there, its growth potential and the expanding cultural activities of the area in its prior showing, and discussed in some detail in the notice released on the proposal, provide reason for concluding that a second local FM service there would serve a need. For these reasons, we believe that this unopposed Channel 228A proposal for providing Midland with a second FM local service has public interest value and warrants adoption.

19. In view of the foregoing, and pursuant to the authority contained in Sections 4(i), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, IT IS ORDERED, That effective

March 28, 1973, the FM Table of Assignments, Section 73.202(b) of the Rules, IS AMENDED to read as follows for the cities listed below:

City:	*Channel No.*
Jesup, Ga	252A, 288A
Orleans, Mass	284
Midland, Mich	228A, 259

20. IT IS FURTHER ORDERED, That the request (RM-1831) of Orman L. Kimbrough to reassign Channel 240A from Kilgore to Gladewater, Texas, IS DENIED.

21. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-211

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS. (STONE HARBOR-AVALON-CAPE MAY COURT HOUSE, N.J.)	Docket No. 19629 RM-1903

REPORT AND ORDER

(Adopted February 21, 1973; Released February 26, 1973)

BY THE COMMISSION:

1. The Commission here considers the Notice of Proposed Rule Making in this docket, adopted November 8, 1972 (37 Fed. Reg. 24368), proposing amendment of the FM Table of Assignments (Section 73.202(b) of the Commission's Rules) on the basis of the petition of Ronald L. Oberholtzer (Oberholtzer) who proposed assignment of Channel 232A to Stone Harbor-Avalon-Cape May Court House, New Jersey.

2. The issues more or less are those set forth in the Notice. We had raised the question whether a hyphenated assignment should be made to the three communities as proposed with a total population of 5,435, all located in Cape May County, population 59,554,[1] especially when the assignment of an FM channel to one of the communities would permit anybody to apply for use at either of the other two communities under the "10-mile" provision in Section 73.203(b) of the Commission's Rules. The petitioner pertinently noted that this proposal was a "drop-in" assignment in a seashore area in the southern part of the State of New Jersey. He relied on the fact that none of the communities had any means of local expression either in terms of a daily or weekly newspaper or broadcast facility and that the 1970 Census population did not properly reflect the population during the summer tourist season. The petition was opposed by Salt-Tee Radio, Inc. (Salt-Tee), the licensee of Station WSLT-FM, Channel 292A, Ocean City, New Jersey. Salt-Tee's opposition was based on economic injury grounds, which the petitioner took issue with in reply comments on the ground that such arguments were nominal and speculative. We noted that the petitioner's view more or less accorded with our view as to the meaning of *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470 (1940), as concerns FM channel rule makings. Filing comments and/or reply comments were the petitioner; Salt-Tee; Cape Christian Broadcasters, Inc., licensee of Station WRIO-FM, Channel 272A, Cape May, New Jersey (Cape Christian); and Jersey Cape Broadcasting Cor-

[1] All population figures are from the 1970 Census.

109-029—73——7

poration, licensee of Station WCMC–FM, Channel 264, Wildwood, New Jersey (Jersey Cape). The latter three opposed the proposal.

3. Oberholtzer primarily relies on the contentions set forth in the petition for rule making which he incorporates by reference. As to the question of hyphenated assignment, however, Oberholtzer states that, while he intends to render primary service to all three communities, he now requests assignment of Channel 232A to Avalon, New Jersey, population 1,283.

4. Salt-Tee in its comments incorporates by reference its previous opposition to the petition. It makes an additional argument about a hyphenated assignment, but this has become moot. Salt-Tee also says that, if the Commission analyzes each community independently, it would determine that an assignment is not warranted.

5. The objections of Cape Christian are based on the proximity of Station WRIO–FM to the communities which Oberholtzer intends to serve, and its dependence on audience and revenues from those communities. Cape Christian also argues about the moot hyphenated assignment. Moreover, Cape Christian states that a prerequisite for assignment of a channel is a showing of a real need for service which is lacking here, since, in addition to Station WRIO–FM at Cape May, there are stations licensed or proposed for Ocean City-Somers Point, New Jersey (WSLT–AM/FM), and Wildwood, New Jersey (Stations WCMC AM/FM/TV), serving the area and, despite Oberholtzer's claim, there are newspapers serving the area. According to Cape Christian, these include the *Herald*, a weekly with offices in Cape May Court House; the *Seven-Mile Beach Reporter* (covering Stone Harbor, Cape May Court House, Avalon and Sea Isle City) with offices at Sea Isle City and North Wildwood; and two Philadelphia newspapers—the *Philadelphia Inquirer* and *Evening Bulletin*—have special sections for Cape May County. Cape Christian points out that Stations WSLT, WCMC, and WRIO–FM, especially the latter, serve the entire area. Strong reliance is placed on the Commission's decision adding Channel 260 to *Ocean City, Maryland*, in Docket No. 19316, 35 F.C.C. 2d 473, 474–5 (1972). Cape Christian also agrees with Salt-Tee's contention in opposition to the petition that there is no reason on the basis of the Commission's consideration of the adequacy of service of the area in the Second Report and Order in Docket No. 17495, as concerns the assignment of an FM channel to *Canton, New Jersey*, 11 R.R. 2d 1676 (1967), to assign another channel. In this respect, Cape Christian says that population and other factors have not changed in the interim.

6. Jersey Cape, in its comments opposing the proposal, urges that its Station WCMC–FM at Wildwood is approximately 10 miles south of the area petitioner wishes to serve and another station would have a severe impact on other radio broadcast stations in the area because of the sparse population except during tourist season. Jersey Cape maintains that a station in the Stone Harbor-Avalon-Cape May Court House area would deprive it of advertising revenue by drawing on that from Wildwood, the city of its assignment. It also states that the area is well served by existing stations and that another FM station in this sparsely populated area would have severe economic impact on all radio broadcast stations, the fact which Station WCMC–FM has

called to the Commission's attention in connection with license renewal in 1969 and 1972.

7. Oberholtzer filed reply comments and a supplement thereto. As concerns Salt-Tee's opposition, he indicates compliance with the Commission's *Policy to Govern Requests for Additional FM Assignments*, 9 R.R. 2d 1245 (1967), in making an appropriate preclusion study and showing that there is a demand for a station at Avalon. As to Cape Christian's opposition, the petitioner contends that service to the Stone Harbor-Avalon-Cape May Court House area from WCMC–AM and FM, and WRIO–FM is "marginal". Oberholtzer also disputes that these communities are adequately served by the four newspapers referred to by Cape Christian. With regard to the economic injury argument, specifically that portion of Cape Christian's contention that an additional FM station in the area would "fractionalize the base available to support those stations currently licensed to the area", Oberholtzer relies on that portion of the Report and Order in Docket No. 19491, adopted December 20, 1972 (FCC 72–1174; — F.C.C. 2d —), dealing with *Morro Bay, California*, to the effect that the Commission has a long-established policy of considering questions of possible undesirable economic competition only in connection with objections raised when a specific application has been filed. Oberholtzer points to the *Ocean City* case, 35 F.C.C. 2d 473, 474–5, as authority for the proposition that allocation of additional FM assignments might be made to a community not entitled to it under population criteria but because of needs during summer tourist season. Oberholtzer takes issue with Cape Christian's reliance on the *Canton, New Jersey*, case for the proposition that the Commission concluded that the area in question was adequately served; Oberholtzer states that not only is the case five years old but the Commission neither referred to the area in question specifically nor did the Commission conclude that the area was adequately served.

8. The *Morro Bay* case merely is a reiteration of our views expressed in the Notice for which we had cited the *Sanders* case. We also agree with petitioner's reading of the *Ocean City, Maryland*, and *Canton, New Jersey*, cases.

9. In view of the foregoing, we believe that the public interest, convenience, and necessity would be served by assigning Channel 232A to Avalon. In this respect, we reiterate the view expressed in Docket No. 19413 that FM channel assignments should not be denied if not able to be assigned elsewhere, 37 F.C.C. 2d 54, 55 (1972). Our decision is based on the facts and policies discussed, and the mandate of Section 307(b) of the Communications Act of 1934, as amended. Authority for the action taken herein is contained in Sections 4(i) and (j), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended. Accordingly, the FM Table of Assignments (Section 73.202(b) of the Rules), IS AMENDED, effective April 6, 1973, by adding the following:

City—Avalon, N.J.; channel No. 232A.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72D-78

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of GENERAL BROADCASTING CO. (KOBO), YUBA CITY, CALIF. For a Construction Permit	Docket No. 19549 File No. BP-18880

APPEARANCES

Robert L. Heald, on behalf of General Broadcasting Company (KOBO); *Robert J. Rawson*, on behalf of Young Radio, Inc.; and *Henry L. Baumann*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE BASIL P. COOPER

(Issued December 14, 1972; effective February 5, 1973 pursuant to section 1.276 of the Commission's rules)

PRELIMINARY STATEMENT

1. In this proceeding, General Broadcasting Company, licensee of standard broadcast station KOBO, Yuba City, California, 1450 kHz, 250 watts, unlimited time, Class IV, seeks a permit to increase daytime operating power from 250 watts to 500 watts local sunset.

2. The Commission, by order adopted July 19, 1972, released July 27, 1972, found that except as indicated by the issues, the applicant was qualified to construct and operate station KOBO as proposed, and designated the above application for hearing specifying the following three issues:

> (1) To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of station KOBO and the availability of other primary (1 mv/m or greater in the case of FM) aural service to such areas and populations.
>
> (2) To determine whether the above proposal would cause objectionable interference to station KVON and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.
>
> (3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience and necessity.

The Commission made Young Radio, Inc., licensee of station WVON, Napa, California, 1440 kHz (Class III), a party to the proceeding.

3. Prehearing conferences were held on October 10 and 31, 1972. The evidentiary hearing was held November 27, 1972. Proposed findings of fact and conclusions of law were filed by the applicant on November 30, 1972. No proposed or reply findings were filed by the Chief, Broadcast Bureau, or by Young Radio, Inc.

FINDINGS OF FACT

4. At the time the KOBO application was being prepared, the applicant's engineer, in predicting the distances to the proposed 0.5 mv/m daytime contour of station KOBO, relied in part on the soil conductivity as shown in Figure M3 of the Commission's rules which indicated a soil conductivity of 30 mv/m for approximately 40 miles south-southwest of station KOBO. On the assumption that the conductivities as shown by Figure M3 of the rules did prevail, it was calculated that with station KOBO operating with daytime power of 500 watts as proposed, there would be a slight, but prohibited, overlap of the proposed 0.5 mv/m daytime contour of station KOBO, 1450 kHz, Yuba City, California, and the existing 0.5 mv/m contour of adjacent channel, station KVON, Napa, California, 1440 kHz, Class III. The prohibited overlap being indicated, the application was designated for hearing on the issues as outlined above.

5. At the second prehearing conference, it was disclosed that Commission files contained measurements which appeared to establish that there would be no overlap of the proposed 0.5 mv/m daytime contour of station KOBO and the existing 0.5 mv/m contour of adjacent channel, station KVON. Additional time was granted within which the parties were to examine the measurements to ascertain if they had been taken properly, and if so, the conductivity shown by said measurements.

6. Commission files establish that on March 12, 1959, measurements were taken on the signal of station KOBO, formerly KAGR, along a radial path of 205° true, the direct radial from station KOBO toward station KVON. These measurements were contained in the files pertaining to station KEST, San Francisco, formerly station KSAN. On September 28, 1972, field intensity measurements on station KOBO radials in the directions 220°, 233° and 245° true were filed with the Commission in support of an application for minor changes in the antenna system of station KVRE, Santa Rosa, California.

7. The applicant's interpretation of the above measurements is that on the KOBO radial 205° true, the 0.5 mv/m contour of station KOBO operating, as proposed, with daytime power of 500 watts, will fall approximately two miles to the north-northeast, or short of the 0.5 mv/m contour of station KVON, Napa, California. On the other measured radials, the separation of the contours is shown to be substantially in excess of two miles. Using the measurements above identified to locate the 0.5 mv/m contour of station KOBO operating on the KOBO radials 205°, 220°, 233° and 245° true, and the soil conductivity as shown by Figure M3 of the Commission's rules to locate the 0.5 mv/m contour on KOBO radials 190° and 265° true, it is shown that with KOBO operating with daytime power of 500 watts, as proposed, the

0.5 mv/m contour of station KOBO will not overlap the existing 0.5 mv/m contour of station KVON, Napa, California.

8. The Broadcast Bureau, after studying the material referred to above, reached the same conclusions as the applicant's engineer—namely, that there will be no prohibited overlap of contours or no objectionable interference.

9. The president of Young Radio, Inc., licensee of station KVON, after studying the engineering data, advised all parties by letter dated November 17, 1972, that the licensee of station KVON was withdrawing objection to the grant of the KOBO application.

CONCLUSIONS

1. In this proceeding General Broadcasting Company, licensee of station KOBO, Yuba City, California, 1450 kHz 250 watts U, Class IV, seeks a permit to increase daytime power from 250 watts to 500 watts local sunset.

2. At the time the KOBO application was prepared and filed, the location of the pertinent service contours was based in part on the assumption that the soil conductivity between station KOBO and station KVON was as shown in Figure M3 of the Commission's rules. The use of the Figure M3 conductivity indicated that on the direct radial from station KOBO toward adjacent channel station KVON, there would be a slight overlap of the proposed 0.5 mv/m daytime contour of station KOBO and the existing contour of station KVON, Napa, California.

3. As shown in paragraph 6 of the basic findings, measurements had been made on the signal of station KOBO on March 12, 1959. These measurements were on the direct radial between station KOBO and station KVON. On September 28, 1972, measurements made on other KOBO radials were filed with the Commission. Measurements on all pertinent radials indicate that with station KOBO operating as proposed, the KOBO 0.5 mv/m daytime contour will not overlap the existing 0.5 mv/m contour of station KVON. The Broadcast Bureau agrees that station KOBO, operating as proposed, will not cause objectionable interference to station KVON, Napa, California. The licensee of station KVON has withdrawn its objection to the grant of the KOBO application.

4. The Commission, in its designation order, found General Broadcasting Corporation to be qualified to construct and operate station KOBO as proposed, but designated the application for hearing because of the indicated overlap of the 0.5 mv/m contours of stations KOBO and KVON. As shown above, the evidence of record established that the 0.5 mv/m daytime contour of station KOBO, operating with daytime power of 500 watts local sunset, will not overlap the 0.5 mv/m contour of station KVON, hence, will not cause objectionable interference to station KVON. Issue No. 2 is resolved in favor of the applicant.

5. The resolution of Issue No. 2 in favor of the applicant renders moot Issues 1 and 3.

6. The evidence of record, summarized in the foregoing findings of fact and conclusions, warrants the ultimate conclusion that the public interest, convenience and necessity will be served by granting the application of General Broadcasting Company.

IT IS ORDERED that unless an appeal to the Commission is taken by any of the parties or the Commission reviews this Initial Decision on its own motion in accordance with the provisions of Section 1.27C of the rules, the application of General Broadcasting Company for a permit to increase daytime power of standard broadcast station KOBO, Yuba City, California, from 250 watts unlimited time to 500 watts local sunset, unlimited time, BE and the same IS HEREBY GRANTED.

BASIL P. COOPER,
Administrative Law Judge,
Federal Communications Commission.

F.C.C. 73-166

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of GRENCO, INC., GREENWOOD, S.C. For Renewal of License of Stations WCRS and WCRS-FM, Greenwood, S.C.	Docket No. 19176 Files Nos. BR-1137, BRH-1674
and RADIO GREENWOOD, INC., GREENWOOD, S.C. For Renewal of License of Station WGSW, Greenwood, S.C.	Docket No. 19177 File No. BR-2821

APPEARANCES

Robert M. Booth, Jr., Esq. (Booth & Freret), for Grenco, Inc.; *Frank U. Fletcher*, Esq. and *Vincent J. Curtis*, Esq. (Fletcher, Heald Rowell, Kenehan & Hildreth), for Radio Greenwood, Inc.; *Lawrence J. Bernard, Jr.*, Esq., for United Community Enterprises, Inc.; *Michael T. Fitch*, Esq., for Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted February 14, 1973; Released February 23, 1973)

BY DEAN BURCH, CHAIRMAN, FOR THE COMMISSION: COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT; COMMISSIONER REID ABSENT

1. This proceeding involves applications filed by Grenco Inc. for renewal of its licenses for radio stations WCRS and WCRS-FM, Greenwood, South Carolina, and by Radio Greenwood, Inc., for renewal of its license for radio station WGSW, Greenwood. The conduct with which we are here primarily concerned arose out of and in connection with applications for mutually exclusive facilities filed by United Community Enterprises, Inc. (United) for a standard broadcast station at Greenwood[1] and by Saluda Broadcasting Company, Inc. (SBC), for facilities at Saluda, South Carolina. In the consolidated proceeding in Docket Nos. 18503 and 18504 involving these applications an issue was designated to explore all the facts and circumstances surrounding the preparation and filing of the SBC application for the purpose of ascertaining whether the SBC application was in fact a strike application; i.e. whether its principal or incidental purpose was to delay or impede the establishment of a new standard broadcast facility in Greenwood.[2] Grenco and Radio Greenwood were made parties to

[1] In a decision adopted October 25, 1972, FCC 72R-308, the Review Board granted United's application.

[2] *United Community Enterprises, Inc., et al.*, 18 FCC 2d 555 (1969).

that proceeding because of their alleged support of the SBC application. Subsequently, before resolution of the strike issue, a petition filed by SBC requesting the dismissal of its application was granted. The dismissal left the strike issue unresolved and accordingly, in an Order, 28 FCC 2d 166, released March 25, 1971, we designated Grenco's and Radio Greenwood's renewal applications for hearing on issues to determine if either of the licensees had participated in or otherwise supported a strike application by SBC for the purpose of obstructing or impeding United's application.

2. In an Initial Decision, FCC 72D-19, released March 14, 1972, Chief Administrative Law Judge Arthur Gladstone absolved Grenco of any wrongdoing with respect to the strike application issue and granted its renewal applications. No exceptions have been taken to that aspect of his decision and it will be affirmed without further discussion in this decision. However, the Presiding Judge resolved the strike issue adversely to Radio Greenwood although he found no evidence of wrongdoing on the part of SBC or its principals. Rather, he concluded that Radio Greenwood had "embraced this application as a vehicle to launch an effort to block United * * * [and] that *he used the SBC transaction as his own strike vehicle, entirely independent of the actions or motivations of the SBC principals*" (emphasis as in original). He further found that George Cook, Radio Greenwood's 25 percent stockholder and general manager, "seriously and substantially perjured himself in respect to material matters testified to in this proceeding." Noting that a character issue against Cook had not been designated for hearing in this proceeding, the Presiding Judge urged that, as a matter of law, we adopt a policy that there is "an implicit character issue for consideration in respect to the truth and veracity of every witness who is a principal, or a person under the control of a principal, in a hearing case." The Judge denied Radio Greenwood's renewal application.

3. Exceptions to the Initial Decision and a supporting brief were filed by Radio Greenwood. The Broadcast Bureau filed a statement in support of the Initial Decision. Reply pleadings were filed by the Bureau, United, and Radio Greenwood. In a Memorandum Opinion and Order, FCC 72-939, we scheduled this proceeding for oral argument on the exceptions. Therein we also called attention to the Presiding Judge's finding of perjury and we directed the parties to include in their oral presentation a discussion of a number of questions raised by that finding.[3] The Commission heard oral argument in this case on January 3, 1973. The Judge's findings of fact will be adopted

[3] The parties were asked to address themselves to the following questions:
(a) Whether the evidence of record establishes that the principals of Radio Greenwood, Inc., or any of them, knowingly and willfully gave false testimony as to material matters at the hearing of this docketed proceeding.
(b) Whether the Commission is precluded as a matter of law from considering whether Radio Greenwood, Inc. possesses the requisite character qualifications to continue as a licensee of a broadcast facility unless a character issue is designated and a further evidentiary hearing is held with respect thereto; or, if not so precluded, whether a further evidentiary hearing would serve any useful purpose.
(c) Whether, on the basis of the evidence presently of record, Radio Greenwood, Inc. possesses the requisite character qualifications to continue as a Commission licensee.
(d) Whether, in view of all of the evidence of record, a grant of the application for renewal of license of Station WGSW filed by Radio Greenwood, Inc. would serve the public interest, convenience and necessity.

except as modified by our decision herein and our rulings on Radio Greenwood's exceptions.

4. Considering first the strike issue against Radio Greenwood, we conclude that the Presiding Judge erred in resolving this issue adversely to the renewal applicant. Our designation order explained that in order to be a "strike" application a principal or incidental motive of its filing "must be to obstruct or delay another application" and we specified as guidelines in making a determination the following: (1) the timing of the application, (2) the economic and competitive benefit occurring from the application, (3) the good faith of the applicant, and (4) questions concerning a frequency study. Since the SBC application was filed approximately 2 months after that of United and it would at least delay the commencement of a new competing facility in the Greenwood market, guidelines (1) and (2) were satisfied. However, as to guidelines (3) and (4), there is not only an absence of evidentiary support for a conclusion that the SBC proposal was a strike application, but the findings of fact adopted by the Presiding Judge preclude such a conclusion.

5. The undisputed evidence of record establishes that the initial steps looking to the establishment of a new standard broadcast station at Saluda were taken by James W. Warren, who was then employed at WGSW as Radio Greenwood's engineer, and Ted B. Wyndham, a Greenwood lawyer. In October, 1966, Cook, after consulting with communications counsel, advised Warren that he must either leave his employment at WGSW or withdraw from further participation in the Saluda proposal. Warren chose to withdraw from the Saluda application and one C. Bruce Barksdale was substituted. The Saluda application with Wyndham and Barksdale as principals was filed on November 16, 1966. With respect to motives and intentions of the participants in the Saluda proposal, the Presiding Judge affirmatively found that Warren and Wyndham had "conceived a bona fide intention and plan to establish a broadcast facility in Saluda in late 1965 or early 1966"; that no principal of SBC was motivated by a desire to block United's application; and that, in fact, the "inception and execution of that plan contemporaneously with the activities of United—was purely coincidental." Furthermore, the Judge found no significant evidence of record that either Cook or any other stockholder of Radio Greenwood had contributed money, services or time to the preparation or prosecution of the Saluda proposal.

6. In order to convert the bona fide application by the principals of SBC into a strike application by Radio Greenwood, the Presiding Judge asserted that our guidelines "are neither applicable nor pertinent * * * [because] *Cook publicly avowed that his interest in the application was in the context of a strike application*" (Emphasis as in original). This determination was predicated upon findings that Cook had evidenced a desire and intent to use the SBC application to his own advantage in order to impede United's application by: (a) seeking to enlist Dan Crosland, Grenco's manager, as an ally in an attempt to stop United; and (b) offering to reimburse Mullinax and Davenport for their expenses if they would withdraw the United application, and

threatening to obstruct United's application when the offer was refused. In further support of his conclusion that Cook had "embraced" the SBC application "as his own strike vehicle," the Presiding Judge took into consideration the continued employment of Warren as chief engineer at WGSW during the period that he was engaged in the preparation of the SBC application. Thus, considerable significance was attached to Cook's failure to present Warren with the alternative between his employment and SBC "earlier in the game, i.e. as soon as he became aware of the potential conflict between Saluda and United early in 1966." As previously noted, this ultimatum was not delivered to Warren until October, 1966, after the United application had been filed and Cook had been advised by communications counsel to do so. While recognizing that the SBC application might have been filed irrespective of when Cook spoke to Warren, the Judge considered that the failure to take earlier action detracted from the weight to be accorded Cook's claim of good faith and his denial of participation in a strike situation and, together with his "utterances concerning his motives and intent in respect to the Saluda applicant's activities, is sufficient to fix upon him the responsibility for encouraging and fostering what was, *for him*, a strike application" (emphasis as in the original).

7. The flaw in the logic of the Initial Decision is the failure to bridge the gap between mere desire and the *support* or *participation* in the *preparation* and *filing* of an *application* which are essential elements of a "strike" charge. Accepting the Judge's findings, there is no significant evidence of record that Cook or any other stockholder of Radio Greenwood committed any overt act which could be interpreted as support, encouragement, or participation in the SBC application or that any stockholder of Radio Greenwood contributed money, services or time to the preparation or prosecution of the SBC application which increased the likelihood of its success or served to delay the grant of United's application. With respect to Warren, who was an employee but not a stockholder of Radio Greenwood, the Judge found that he had a *bona fide* desire to own his own station and he expressly absolved him of any wrongdoing. In our view, even assuming that Cook had the desire to impede and obstruct the United application and welcomed the SBC filing, it cannot be held that Radio Greenwood—the principals of which filed *no* application—supported or otherwise participated in the preparation of a strike application absent a showing of some overt act in furtherance thereof or of the failure to perform some affirmative obligation which reasonably could be construed as supporting the strike application.

8. As for Cook's failure to require Warren either to resign or withdraw from the Saluda proposal at an earlier time, little if any decisional weight may be accorded to this finding of delay. While prudence may have dictated that Cook act more quickly—again accepting the Judge's finding that he became aware of the potential conflict between SBC and United early in 1966—we are not persuaded that Cook may be charged with having delayed in the performance of an affirmative obligation merely because he did not act sooner. Until United's application was filed there was no pending application with which the Saluda proposal would be in conflict, and Warren's associa-

tion with Radio Greenwood was a significant factor only because of this potential conflict. In the circumstances of this case where Warren was acting in good faith and the principals of Radio Greenwood committed no overt act in furtherance of the preparation or prosecution of the Saluda proposal, we are not prepared to hold that an adverse inference is warranted because Cook's discussion with Warren did not take place until after the actual filing of the United application. In this connection we also note that Cook had reason to believe Warren and Wyndham would not proceed with the SBC application after it appeared that a comparative hearing would be necessary because of the resultant financial strain. Of decisive significance, in our view, is the fact that when it became apparent that Warren and Wyndham intended to proceed with the application and immediately upon receiving advice from communications counsel that such action was advisable, Cook notified Warren that he must either resign his employment or withdraw from SBC. We conclude that Cook did not act unreasonably and that there is insufficient evidence of record to sustain a finding that Radio Greenwood supported or participated in the filing of a strike application.

9. Next we shall consider: (a) whether in the disposition of this case we may take into account any false swearing by Cook at the hearing in the absence of a character issue; and if we may, (b) whether the evidence of record is sufficient to support a conclusion that Cook, as a principal of Radio Greenwood, lacks the requisite character qualifications to continue as a licensee of the Commission.

10. On issue (a) above, the Courts and the Commission have consistently held that false statements in response to Commission inquiries and in the course of the hearing process are, in and of themselves, of substantial significance. See *Nick J. Chaconas*, 28 FCC 2d 231, 233 (1971). Complete candor from Commission licensees as to matters under investigation may be demanded and is expected. *FCC* v. *WOKO, Inc.*, 329 U.S. 223 (1946). While issues are designated to place the licensee on notice of the charges which he will be required to meet at the hearing, notice to a renewal applicant that he must testify truthfully and not conceal material information is superfluous. Taking an oath serves that purpose and no unfairness results in holding a renewal applicant to have knowingly assumed the risk of an adverse determination as to its character qualifications when a principal testifies falsely at the hearing.

11. As to issue (b), the matter is a most difficult and close one. If this were a tort trial, and it was necessary in order to resolve the issue of tort liability to decide between the testimony of Cook on the one hand and Mullinax, Davenport and Crosland on the other hand, we would agree with the conclusion of the Chief Administrative Law Judge to go with the latter testimony. But that is not the type of issue before us. Rather, it is whether we should find that Cook deliberately lied in his testimony to this agency and on that basis lacks the requisite character to be a licensee. What is involved, therefore, is the integrity of the Commission's processes—that it must be able to rely on candor and honest dealing from its licensees. *FCC* v. *WOKO, Inc.*, supra. But while we have no hesitancy in resolving the issue (unlike the conflict

issue in, say, *In Re Complaints Covering CBS Program "Hunger in America"*, 20 FCC 2d 143 (1969)), it behooves us, of course, to do so with full awareness of the drastic consequences of an adverse ruling. Taking into account that consideration and the nature of the record evidence here involved, including the difficulty of remembering fully conversations that occurred three to five years before the testimony, we are inclined not to find deliberate lying (perjury) by Cook. Rather we believe there occurred a faulty shading of recollection—an attempt to recall long past conversations where the consequences may have unconsciously influenced Cook's recollection in a manner favorable to himself.

12. We think that this effort—perhaps understandable human nature in the circumstances and reflecting adversely on Cook—cannot be said to be deliberate falsehood (or perjury), with the degree of certainty that we believe is reasonably called for with respect to a finding of this nature. We stress that our holding is based on the particular facts of this case, and does not represent in any way a retreat from the important policy of *WOKO* that we cannot temporize with deliberate deception of the Commission. No matter how unblemished the reputation of the principal in the community, no one is allowed "one bite" at the apple of deceit. We believe that by this time the message has been received by broadcast licensees that a station can get into greater and indeed the most difficulty by a course of deception or lack of candor when an issue is raised. See, e.g., *Continental Broadcasting, Inc.*, 15 FCC 2d 120 (1968), reconsideration denied 17 FCC 2d 485 (1969), affirmed 142 U.S. App. D.C. 70, 439 F 2d 580 (1971), cert. denied, 403 U.S. 905 (1971); *Palmetto Broadcasting Co.* (WDKD), 33 FCC 250 (1962), reconsideration denied 34 FCC 101 (1963), affirmed sub nom. *E. G. Robinson, Jr.* v. *FCC*, 118 U.S. App. D.C. 144, 334 F 2d 534 (1964), cert. denied 85 S. Ct. 84 (1964); *Brandywine—Main Line Radio, Inc.*, 24 FCC 2d 18, (1970) reconsideration denied 27 FCC 2d 565 (1971), affirmed U.S. App. D.C., Case No. 71-1181, September 25, 1972, rehearing denied December 4, 1972. In short, our judgment here is strictly a factual one—that while it is a close question, it is appropriate to hold back from the ultimate adverse finding on the particular record before us.

13. Accordingly, IT IS ORDERED, That the applications of Grenco, Inc. for renewal of its licenses for Stations WCRS and WCRS-FM, and of Radio Greenwood, Inc. for renewal of its license for Station WGSW, all at Greenwood, South Carolina, ARE GRANTED; and

14. IT IS FURTHER ORDERED, That the Motion to Correct Transcript, filed January 11, 1973, by Radio Greenwood, Inc. IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Rulings on Exceptions of Radio Greenwood, Inc.

Exceptions to findings	*Rulings*
A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A12, A13, A15, A16, A18, A21.	Denied. The exceptions are not of decisional significance, particularly in light of our decision herein.
A11	Granted to the extent set forth in paragraph 8 of our decision as to Cook's obligation to require Warren to resign or withdraw from the SBC application. Denied in other respects as not decisionally significant.
A14	Denied. The exception is not of decisional significance. It is also a misstatement of law since it is not a prerequisite to a strike application that the applicant be financially qualified.
A17	Denied. Mullinax's denial was not under oath, did not adversely affect Cook, and was an attempt to maintain the confidentiality of a business decision. It has no bearing on Mullinax's veracity under oath in a hearing proceeding.
A19	Granted in part. See our conclusion herein, that Cook did not adopt SBC's application as a strike application. Denied insofar as Mullinax's notes are concerned as not decisionally significant.
A20	Denied. No basis exists for the requested action.

Exceptions to failure to make findings	*Rulings*
B1	Denied. While Mullinax and Davenport were aware of Cook's antagonism, a finding that they were "Conditioned to be suspicious" and that as a result any notes taken would be suspect, is speculative.
B2, B3, B7, B8, B9, B10, B11, B13, B14, B16, B17, B18, B19, B20, B21, B23, B25, B26, B27, B28, B29, B30, B32, B33, B34, B35, B36, B37, B38, B39, B40, B41, B42, B43, B44, B45, B46, B47, B48.	Denied. The requested findings are not of decisional significance, particularly in light of our decision herein.
B4	Denied. The requested finding is not warranted by the evidence of record nor is it of decisional significance.
B5, B6, B15	Denied. The instant record does not support the requested findings which are based on speculation.
B12	Granted to the extent that the instant record does not support the finding of the Judge that Cook perjured himself. Denied in other respects as not decisionally significant.
B22	Granted to the extent set forth in paragraphs 11 and 12 of our decision.
B24	Denied. It does not follow that because Mullinax attempted to get Crosland to agree with his version of what occurred, that Mullinax was less than candid in preparing his notes and his testimony.
B31	Granted. The proposed finding indicates that the differences in testimony might be attributed to differences in recollection.

Exceptions to conclusions	*Rulings*
C1, C4, C6, C7, C8, C9, C10, C11, C12, C13, C14(1),* C15, C17, C18, C19, C21, C23, C24, C25, C26, C28, C30, C32.	Denied. The exceptions are not of decisional significance.
C2	Denied. The conclusion is supported by the record.
C3	Granted. The record does not support a finding that Cook was involved in a strike application.
C5	Granted in part. Even if true, the conclusion does not show acts supporting a strike application. Otherwise, the exception is denied as not of decisional significance.
C14(2)*	Granted. The discrepancies in testimony can be attributed to differences in recollection.
C16	Denied. The exception is speculative and not supported by the evidence of record.
C20	Granted. The conclusion is speculative and not supported by the evidence of record.
C22, C37	Granted. Cook was acting upon his attorney's advice and under the circumstances of this case was not obliged to deliver to Warren the ultimatum before the filing of the applications became imminent.
C27, C29	Denied. The exceptions are not of decisional significance. As our decision holds, however, while Cook may have desired to capitalize on the SBC filing there is no evidence that he actively supported or aided the filing.
C31	Granted. Cook acted on advice of counsel, and no adverse conclusion should be drawn from his failure to offer Warren the ultimatum concerning his participation in SBC earlier.
C33	Granted. The Administrative Law Judge improperly departed from the criteria for strike applications. The differences in the testimony may be attributed to differences in recollection.
C34	Granted. The Judge relied on incorrect standards to deny Radio Greenwood's application.
C35, C36, C38, C40	Granted. The record does not support the conclusion that Cook actively supported the SBC application or embraced it as a strike vehicle.
C39	Granted. There is insufficient basis for a finding of perjury since the discrepancies in the testimony may be attributed to differences in recollection.
C41	Granted. The record evidence does not warrant a conclusion that the renewal of Radio Greenwood's license is inconsistent with the public interest.

Exceptions to rulings	*Rulings*
D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12, D13, D14, D15, D16, D17, D18, D19.	Denied. The exceptions are not of decisional significance.

*There are two exceptions numbered C14.

Dissenting Opinion of Commissioner Nicholas Johnson

Today, after a two-year fact-finding proceeding, the Federal Communications Commission dismisses the facts found by its Chief Administrative Law Judge and supported by its staff, and grants Radio

Greenwood, Inc.'s application to renew the license for WGSW, Greenwood, South Carolina. I dissent because the record clearly indicates that George Cook, one of Radio Greenwood's principal stockholders, misrepresented the facts to this Commission.

In March, 1971, we designated Radio Greenwood's license renewal application for hearing to determine whether Mr. Cook had participated in the filing of a strike application (application of Saluda Broadcasting Co. for facilities at Saluda, South Carolina)—an application designed solely for the purposes of impeding the establishment (by United Community Enterprises) of a new broadcast facility in Greenwood South Carolina. In his initial decision, the Chief Administrative Law Judge concluded that while Mr. Cook had not personally participated in the filing of the Saluda Broadcasting application, he had "embraced" that application and had, as a result, used it as a vehicle to try to block the establishment of a competing radio station in Greenwood. The Judge also found that Mr. Cook had lied during the hearing in an attempt to avoid an adverse determination with respect to the strike issue.

I agree with the majority that, as a matter of law, Mr. Cook's conduct with respect to the Saluda application does not inculpate Radio Greenwood in the filing of an unlawful strike application (see Majority opinion at 4–6). I also agree that while we did not designate the misrepresentation question for hearing—because the alleged misrepresentations by Cook did not take place until after the hearing had begun—that question is a proper one for consideration at this time. (See Majority opinion at 7.) However, I cannot agree with the majority's conclusion—reversing the Chief Administrative Law Judge—that the evidence is insufficient to support a finding of misrepresentation.

The Administrative Judge found that Mr. Cook had lied on two separate occasions during the hearing. First, Cook denied that he had approached Mr. Dan Crosland, general manager of Grenco, Inc., licensee of two other Greenwood radio stations, with the suggestion that both Cook and Crosland attempt to thwart United's pending Greenwood application. Mr. Crosland testified that Cook had made such a suggestion. When Cook, who recalled numerous historical details, including the date of the meeting, denied the substance of the conversation as related by Crosland, the Administrative Judge informed Cook that there was a distinct difference between "not recalling" a conversation and "denying" that it ever took place. Mr. Cook, nevertheless, denied the conversation, and the Judge—who, unlike the majority, had the opportunity to examine the witnesses' demeanor first-hand—believed Crosland. The majority nevertheless attributes this discrepancy in testimony to Cook's "shady recollection"—a conclusion which makes no sense on the present record.

The Judge next determined that Cook had lied when he denied the veracity of an affidavit filed by William Mullinax, a principal of United Community Enterprises. In that affidavit, and also during the hearing, Mullinax stated that Cook had approached both Mullinax and John Davenport (another United official) and had attempted to buy them off in order to thwart the United Application. Again, the Admin-

istrative Judge believed Mullinax, not Cook, and the majority, apparently realizing that there is no basis in the record for reversing this finding, again attributes Cook's false testimony to a "faulty shading of recollection."

There is simply no basis for such a conclusion. Either Cook was deliberately lying during the hearing, or we must conclude that both Mullinax and Crosland perjured themselves. The Administrative Judge chose the first conclusion, and there is nothing in the record to suggest that that decision is clearly—or even slightly—erroneous. Since none of the witnesses claimed they could not remember the facts, the majority's suggestion to the contrary finds support, not in the record, but, rather, in the majority's desperate desire to avoid imposing the penalty which inevitably follows from a finding of misrepresentation.

The majority recognizes—and, indeed, the law is crystal clear—that deception or lack of candor before this Commission is grounds for the denial of a license renewal application. *Nick J. Chaconas*, 28 FCC 2d 231, 233 (1971); *Brandywine-Main Line Radio, Inc.*, 24 FCC 2d 18, 28–32 (1970); *Continental Broadcasting Inc.*, 15 FCC 2d 120 (1968); *WMOZ, Inc.*, 36 FCC 202 (1964); *FCC* v. *WOKO, Inc.*, 329 U.S. 223 (1946). Our licensees have clear notice of this prohibition against deceit, and strict compliance is obviously crucial if we are to preserve the integrity of our process. *See, e.g., Nick J. Chaconas, supra.*

Students of the FCC have discovered that this Commission is loath to invoke the severe sanctions of license revocation or renewal denial for any reason *other* than misrepresentation. *See, e.g.*, Abel, Clift and Weiss, "Station License Revocation and Denials of Renewals (1934–1969)," 14 *Journal of Broadcasting*, 411 (1970). There the authors illustrate that in nearly every case where this Commission revoked a broadcast license or denied a renewal application, misrepresentation was a key issue. Students of the FCC are also aware that it is normally the small, poorly represented broadcaster—and not the large multiple owner—who suffers most severely under our approach to misrepresentation. *See, e.g., Trans America Broadcasting Corp.*, 33 FCC 2d 596 (1972), where the majority, after designating one of a large broadcaster's renewal applications for hearing on, *inter alia*, misrepresentation issues, fought mightily to avoid finding such misrepresentation. *See also* the Hearing Examiner's Initial Decision, 20 RR 2d 1095 at 1108–1109, where, in the face of heavy odds, the fact-finder struggled even harder to avoid the conclusion that the licensee had misrepresented itself to this Commission.

By today's decision, the majority illustrates that it will no longer engage in such unfair discrimination against the small station owner. In so doing, however, the majority also reveals that whether a station be big or small, misrepresentation by its licensee will not result in the denial of a renewal application.

When we come to the point where we are no longer willing to ensure that our licensees exhibit honesty in precedings before this Commission, then we are surely lost.

I dissent.

109-029—73——8

F.C.C. 72D-19

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of GRENCO, INC., GREENWOOD, S.C. For Renewal of License of Station WCRS and WCRS-FM, Greenwood, S.C. and RADIO GREENWOOD, INC., GREENWOOD, S.C. For Renewal of License of Station WGSW, Greenwood, S.C.	Docket No. 19176 File Nos. BR-1137 and BRH-1674 Docket No. 19177 File No. BR-2821

APPEARANCES

Robert M. Booth, Jr., Esq. (Booth & Freret), for Grenco, Inc.; *Frank U. Fletcher*, Esq. and *Vincent J. Curtis*, Esq. (Fletcher, Heald, Rowell, Kenehan & Hildreth), for Radio Greenwood, Inc.; *Lawrence J. Bernard, Jr.*, Esq. (Pierson, Ball & Dowd), for United Community Enterprises, Inc.; *John H. Midlen, Jr.*, Esq., for James W. Warren; *Walter C. Miller*, Esq., *Charles A. Zielinski*, Esq., and *Michael T. Fitch*, Esq., for Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF CHIEF HEARING EXAMINER ARTHUR A. GLADSTONE

(Issued March 8, 1972; Released March 14, 1972)

PRELIMINARY STATEMENT

1. By Memorandum Opinion and Order, 28 FCC 2d 166, 21 RR 2d 560 (released March 25, 1971), the Commission designated the above-captioned applications for hearing upon the following issues:

> 1. To determine whether Grenco, Inc., principals or agents and/or whether Radio Greenwood, Inc., principals or agents supported or otherwise participated in the preparation and filing of the application of Saluda Broadcasting Company, Inc. for a new radio station at Saluda, South Carolina on 1090 kHz, 500 watts power, daytime only (File No. BP-17529, Docket No. 18504) for the purpose of impeding or obstructing grant of the application of United Community Enterprises, Inc. for a new radio station at Greenwood, South Carolina on 1090 kHz, 1 kw power, daytime only (BP-17439, Docket No. 18503).
>
> 2. To determine whether in light of the evidence adduced under the foregoing issue, grant of the applications for renewal of

licenses of WCRS and WCRS–FM submitted by Grenco, Inc. and WGSW submitted by Radio Greenwood, Inc. would serve the public interest, convenience and necessity.

2. A prehearing conference was held on May 4, 1971, and the matter was heard in Greenwood, South Carolina, on August 10–12, 1971, and in Washington, D.C., on October 1, 1971, and November 12, 1971. The record was closed on November 12, 1971. Proposed findings of fact and conclusions of law, and replies thereto by all parties except Grenco, have been timely filed. United sought leave to file a supplemental pleading relative to the reply filed by Radio Greenwood. That motion was granted, and the supplemental pleading has been duly considered.[1]

FINDINGS OF FACT

3. This proceeding involves all the broadcast stations licensed to Greenwood, South Carolina: WCRS, 1450 kHz, 1000 watts day, 250 watts night, unlimited time, and WCRS–FM, 96.7 MHz, 1300 watts effective radiated power in both the horizontal and vertical planes, unlimited time, licensed to Grenco; and WGSW, 1350 kHz, 1000 watts daytime only, licensed to Radio Greenwood.

4. The basis for this proceeding arose out of the hearing in Docket Nos. 18503 and 18504, in which there were at issue mutually exclusive applications for new facilities for Greenwood and Saluda, South Carolina, respectively. United Community Enterprises, Inc. (United), the applicant for Greenwood,[2] successfully sought enlargement of issues in that proceeding to include a strike issue against Saluda Broadcasting Company, Inc. (SBC), the Saluda applicant. Grenco and Radio Greenwood were made parties to that proceeding because of their alleged involvement in supporting the SBC application as a strike application against United.[3] Subsequently, and before hearing on the strike issue was conducted, a petition by SBC to dismiss its application was granted. A subsequent motion, filed by Radio Greenwood, to enlarge the issues in the United-SBC case to permit resolution of the strike allegations against it, was denied.[4] These actions left unresolved allegations of participation in a strike application outstanding against Grenco and Radio Greenwood,[5] with no pending proceeding in which to resolve them. When the Grenco and Radio Greenwood renewal applications later came before the Commission, it designated them for hearing in this proceeding and made United a party hereto. (Designation Order, at paragraphs 2 and 3.)

[1] Motion for leave to file granted by Order of February 28, 1972.
[2] The application of United was denied in an Initial Decision in Docket No. 18503, FCC 71D–72 (released October 19, 1971) for reasons not germane to the issues in this proceeding. United filed its exceptions thereto on December 20, 1971. The matter is pending final decision.
[3] 18 FCC 2d 555 (Review Board 1969).
[4] *United Community Enterprises, Inc.*, 22 FCC 2d 556, 18 RR 2d 1040 (Review Board 1970).
[5] Grenco is wholly owned by Douglas Featherstone (Grenco Ex. 2). The ownership structure of Radio Greenwood is as follows: W. C. Woodall, Jr.—37½ percent, Mrs. O. C. Swindle—37½ percent, and George B. Cook, Jr.—25 percent (Tr. 170).

UNITED'S PETITION FOR ENLARGEMENT OF ISSUES IN DOCKETS NOS. 18503 AND 18504

5. United's Petition for Enlargement of Issues (Grenco Ex. 6), with the affidavits of Wallace A. Mullinax (B/B Ex. 6), John Y. Davenport, and Palmer A. Greer (United Ex. 9) attached thereto, was filed April 29, 1969.[6] Mullinax and Davenport are the principals of United, and Greer was United's consulting engineer.

6. In his affidavit Mullinax made certain significant allegations which are summarized as follows: He and Davenport went to Greenwood on September 12, 1966, to place a legal advertisement announcing the filing of United's application for Greenwood. While there, they visited Dan Crosland, manager of WCRS, to renew their acquaintance with him and, as a courtesy, to inform him of their application. Crosland said he was aware of preparation of an application for Greenwood, but he had not known by whom. He also said that George Cook, Jr., manager of WGSW, had earlier contacted him (Crosland) regarding the possibility of a third standard broadcast station coming into Greenwood. Crosland said that Cook was very upset about the possibility of additional competition in Greenwood and had suggested to Crosland that they cooperate to keep additional competition out of the community, and that they could do so by having a competing application filed for Saluda. Crosland said he had told Cook that WCRS would not participate in such activities. (B/B Ex. 6.)

7. Mullinax's affidavit further stated that, after leaving Crosland's office, Davenport and Mullinax went to WGSW to speak to Cook. Cook said he had known that an application was being filed. Cook inquired how much profit United expected to make in the first few years and said that he might be able to arrange payment equal to that profit if United would withdraw its application. Mullinax and Davenport responded that they wanted to serve Greenwood and that time and expenses had gone into preparation of their application. At that point, Cook offered to reimburse United for all those expenses and said the majority owner of WGSW, Mr. W. C. Woodall, Jr., wanted to fight United's application. (B/B Ex. 6.)

8. Mullinax stated that, after he and Davenport again told Cook they would not withdraw their application, Cook told them that 1090 kHz, the frequency for which United was applying, could be used in Saluda and he knew people in Greenwood who would apply for the frequency in Saluda. (B/B Ex. 6.)

9. Mullinax's affidavit further recited that, after the conversations with Cook and Crosland, he telephoned United's consulting engineer, Palmer A. Greer, and related the conversations to him. Later, on the same day (September 12), Greer's wife phoned Mullinax and said that Mullinax and Davenport should make notes concerning the conversations with Cook and Crosland.

10. Mullinax stated that, after SBC filed, he and Davenport instructed Greer to conduct a frequency search for Saluda to see if any

[6] All exhibit references are to exhibits received in *this* proceeding.

frequency other than 1090 kHz was usable there, and that, on February 21, 1967, Greer wrote to W. J. Holey, SBC's engineer, to suggest another frequency usable in Saluda which would require a two-tower directional antenna system and which would provide greater coverage than 1090 kHz. The affidavit recited that Holey wrote Greer, March 1, 1967, saying that he had discussed the frequency change with SBC and they were not interested. (B/B Ex. 6.)

11. Mullinax's affidavit further recited that he and Davenport visited Ted B. Wyndham, one of the principals of SBC, in Greenwood on March 17, 1967. The conversation began with Mullinax and Davenport offering reimbursement of SBC's expenses if SBC would withdraw. Wyndham stated that he had become interested in a station about one year earlier (which Mullinax identified as the time when United began looking for a transmitter site in Greenwood). Mullinax stated that Wyndham said he had considered filing for Greenwood, but that Douglas Featherstone, owner of WCRS and referred to by Wyndham as a friend, had said Saluda would be a better place for a station. The affidavit also pointed out that Wyndham's and Featherstone's offices were in the same building and adjacent. (B/B Ex. 6.)

12. Mullinax averred that Wyndham said that Jim Warren, chief engineer at WGSW, had helped prepare the SBC application. When Mullinax asked Wyndham if SBC had seriously considered the frequency change United proposed, Wyndham replied that he had not been informed of any proposal for a frequency change by Holey. Mullinax and Davenport explained the proposal to Wyndham and, according to Mullinax, Wyndham said he would consider it. However. Mullinax stated, Wyndham never communicated further with United about the proposal. (B/B Ex. 6.)

13. Davenport's affidavit confirmed Mullinax's affidavit. Greer's affidavit confirmed that Mullinax had telephoned him on or about September 12, 1966, and conveyed the information recited in Mullinax's affidavit regarding the September 12, 1966 meetings between Mullinax, Davenport, and Cook, and between Mullinax, Davenport, and Crosland. Greer also confirmed that he had written Holey regarding a possible change in the frequency of SBC and had received Holey's reply that SBC was not interested in the proposed change. (United Ex. 9.)

14. On the basis of the affidavits summarized above, United alleged that the following facts supported an inference that the SBC application was a strike application:

a. The managers and owners of the two existing Greenwood stations stand to benefit financially if the United application is denied.

b. Cook and Crosland, the respective managers of Stations WGSW and WCRS, both Greenwood, conferred about the possibility of opposing an application for a third Greenwood station even before the United application was filed, and the methods of opposition discussed in the conference included the filing of a competing application at Saluda.

c. Cook offered to pay the United principals the profits they expected to make for the first few years, as well as reimburse their expenses, if they would withdraw their application.

d. Cook told the principals of United that the 1090 kHz frequency could be used in Saluda and that he (Cook) knew of people in Greenwood who would file for it.

e. Although an alternate frequency, which would afford much better service than the SBC proposal was available, SBC decided to go through the expense and delay of a hearing rather than amend its application. Furthermore, although the availability of the alternate frequency was made known to SBC's consulting engineer, and he replied that the frequency change had been discussed "with his clients," a principal of SBC indicated he was not aware of the alternate frequency some seventeen days after the date of the engineer's reply.

f. A principal of SBC first considered filing an application for Greenwood, but Featherstone, the owner of an existing Greenwood station, persuaded him to file for Saluda. These two individuals, both of whom are attorneys, also apparently have a professional relationship and share adjoining offices.

g. The chief engineer of WGSW in Greenwood assisted the SBC principals in preparing their application.

15. The foregoing paragraphs, summarizing the allegations contained in United's Petition for Enlargement of Issues, and the affidavits attached thereto, introduce the various persons and contentions involved in this proceeding. It is now desirable to discuss the circumstances pertaining to the preparation of the respective applications and the events subsequent to the filing of the applications.

THE UNITED APPLICATION

16. Mullinax and Davenport conceived the idea of setting up United in early January 1966. They requested that Palmer Greer, a consulting engineer, make a frequency search for Greenwood. Greer's report, dated February 10, 1966, stated that 1090 kHz was available in Greenwood, and, if any conflict developed for 1090 kHz, then 1560 kHz "may be usable." (United Ex. 2.) Greer recommended that United apply for 1090 kHz, and explained to Mullinax and Davenport the amount of land which would be necessary for a transmitter site for operation on 1090 kHz. Mullinax and Davenport decided to apply for 1090 kHz. Armed with material prepared by Greer showing the size of the plot of land necessary for an antenna and ground system, Mullinax went to Greenwood in late February and March 1966 to obtain the necessary site.

17. Mullinax and McLean Hall, a Greenville, South Carolina real estate broker, went to Greenwood on Good Friday 1966 in search of a transmitter site. They met Alston Calhoun, a Greenwood real estate broker, and Reverend Coker, who owned a plot of land in Greenwood. Mullinax told these men that he was interested in land for the purpose of putting a radio station in Greenwood and that the land would be

used for a tower and ground system. *Mullinax did not think he mentioned the frequency on which the station would operate, but he was not certain.* Around April 1, 1966, United entered into a 30-day option agreement to purchase Coker's land. Greer and United had agreed that, if United found a parcel of land suitable for the transmitter site, Greer would inspect the land. Greer inspected the Coker property and informed Mullinax that the plot was too small.

18. After Greer rejected the Coker property, Mullinax went back to Hall. Hall was tied up with other matters and said that Mullinax should work with Calhoun. Mullinax requested that Calhoun look for another plot. Within about 30 days, Mullinax decided that Calhoun was not producing. Mullinax decided to look for a piece of land himself and discharged Calhoun. *Mullinax did not know how many persons (if any) in Greenwood Calhoun had approached about land during the 30 days, or whether he informed people about the purpose for which the land was being sought.*

19. Mullinax, after he took over the task of looking for land for the transmitter site, spoke to about 25 residents of the Greenwood area. None of the people he spoke to asked him the purpose for which the land was sought. When speaking to people regarding land, Mullinax concealed his plans for the land. Mullinax identified himself by name when making land inquiries, but did not indicate that he was associated with Station WESC, Greenville.

20. In 1966, Mullinax was manager of WESC, although he stated that his duties were those of sales manager. In 1966, Mullinax was also a personality on a morning country and western program on WESC, and he used his own name on the program. In 1966, WESC's 0.5 mv/m contour included all of Greenwood County, in which Greenwood is located. At this time, Mullinax received a small amount of fan mail from Greenwood and he represented to prospective advertisers on his program that he had listeners in Greenwood County.

21. Mullinax found a second parcel of land in July 1966 and Greer inspected it.

22. The conducting of a community survey of Greenwood for the application was Davenport's responsibility, but, while he was inquiring about land, Mullinax asked people what they liked to hear on the radio. He never told anyone he was interested in establishing another station in Greenwood and they never asked him why he wanted to know their radio interests. Mullinax believed that Davenport's activity regarding the survey began in late May 1966. Because Mullinax was busy with other matters, he did not confer with Davenport regarding the survey until August 1966, when they began to put together the United application.

23. Davenport visited Greenwood in June and July 1966 to conduct the survey. He visited businessmen, government and community leaders, case workers at service agencies, and members of the general public. He told interviewees that he was from WESC in Greenville [7] and hoped to establish a new station in Greenwood. He did not tell any

[7] Davenport was general manager of WESC in 1966. He had no ownership interest in the station.

interviewees the hours of operation, power, or frequency of the proposed station.

24. Greer did the engineering work on United's application. Greer did not reveal the frequency for which United intended to file to anyone other than United's principals or counsel.

THE SBC APPLICATION

25. What ultimately became the Saluda Broadcasting Company began as an oral joint venture agreement between Ted B. Wyndham, a Greenwood lawyer, and James W. Warren, chief engineer at WGSW. Wyndham came to Greenwood in June 1965 and met Warren a few months later. They met because they were neighbors and because Wyndham's office was close to WGSW. They began having coffee together. Warren and Wyndham first began discussing the possibility of obtaining a construction permit for a broadcast station late in 1965, but no action was taken until 1966. Wyndham first became interested in establishing a radio broadcast station somewhere in the Greenwood area in late 1965 or early 1966 and proposed the idea to Warren.

26. According to Warren, in early 1966, they discussed available frequencies and selected Saluda for the location. They did not have a town in mind at first, but ultimately had a frequency search made for Saluda because Warren believed that Saluda looked like a small town with possibilities and that it was the best choice in the area. At some point in their discussions, they considered applying for a station in Greenwood, but their initial discussions did not deal with Greenwood.

27. In an affidavit executed May 17, 1969, and filed as an attachment to SBC's Opposition to United's Petition for Enlargement of Issues in Dockets 18503 and 18504, Wyndham stated that he and Warren first considered filing to construct a station in Greenwood, but rejected that idea because it would have cost Warren his job at WGSW and because Warren said it was easier to get a grant in a community with no stations (United Ex. 1, paragraph 4). At the hearing, however, Wyndham stated that he and Warren decided not to file for Greenwood because it already had two AM stations, not because filing for Greenwood would cost Warren his job. (Warren also denied making such a statement to Wyndham.) Regarding the choice of Saluda, Wyndham testified that he and Warren were looking for a town without any station, within 30 or 40 miles of Greenwood, and they concluded that Saluda [8] had growth potential, with industries going there.

28. On April 20, 1966, Warren wrote Robert D. Lambert, a consulting engineer in Columbia, South Carolina, requesting a frequency search for Saluda. Warren's letter said that the information transmitted was in reference to their last telephone conversation and stated that Lambert "said in our first telephone conversation that the clearance [for a station in Saluda] would be real close, a matter of a few miles one way or the other." The letter stated that a check for $150 was enclosed to cover the cost of the search (B/B Ex. 1). Warren paid

[8] Saluda is 30 miles from Greenwood.

for the search. Warren chose Lambert for the search because he was familiar with Lambert from professional advertising sent by Lambert to WGSW and referred by Cook to Warren.

29. On May 10, 1966, Lambert sent a letter to Warren giving the results of the frequency search for Saluda. The letter stated that 1090 kHz with a .5 kw power could be used daytime only, and that a few other frequencies might be used with .25 kw power (B/B Ex. 2). Lambert also stated:

> As I mentioned on the telephone, in a previous frequency search for another part of the state, I have suggested the possibility of 1090 kcs, and, if this were applied for in that location, I could not handle the engineering portion of your application for this same frequency due to the conflict of interests which I am sure you understand. (B/B Ex. 2.)

Warren did not recall discussing 1090 kHz with Lambert during a telephone call, but he was sure that it was discussed if Lambert so indicated in the letter. The frequency search in another part of the state, referred to by Lambert, had not been requested by him (Warren). He had not discussed any specific frequency with Lambert when he requested the frequency search for Saluda. Warren said that he merely asked Lambert to find an available non-directional frequency in Saluda. Warren never mentioned 1090 kHz prior to receipt of Lambert's letter of May 10, 1966.

30. At the time Warren requested Lambert to perform the frequency search, he was not aware of anyone being interested in filing for a new station in Greenwood. *At about this same time, he mentioned his interest in a station to Cook.* Warren asked Cook his opinion of Saluda as a place for a station and Cook replied that he thought Saluda was too small. Warren claims he did not mention to Cook any proposed frequency, and they had no further discussions about this subject until United filed its application.

31. *Cook acknowledged having a discussion, in April 1966, with Warren regarding a proposed operation in Saluda.* Warren had talked to Cook about his interest in owning a small station and asked him what he thought about Saluda. Cook said it was too small. Warren told him that the people and merchants of Saluda were enthusiastic about a station and Cook said Warren might be able to make it if he ran the station himself and sold and did some of the announcing. Cook and Warren discussed whether the Saluda station would serve Greenwood County; and Warren indicated he hoped to sell advertising in Greenwood County and Greenwood. Cook claims that, at this time, Warren did not indicate the frequency on which the proposed station would operate. Warren mentioned a power of 500 to 1000 watts.[9] Finally, Cook realized that a station with 500 or 1000 watts power in Saluda would cover Greenwood approximately as well as WGSW covered Saluda, and that WGSW covered Saluda well and represented to advertisers that they had a good audience in Saluda. However, Cook alleged that he was not concerned about a Saluda station reducing WGSW's audience in Greenwood, because people prefer stations in

[9] It is most curious that Warren, a radio engineer, would mention the power, but not the frequency, particularly in light of the contemporaneous consideration, with Cook, of expected coverage.

their own community and county, and because he could not prevent Warren from filing for the station if Warren wanted to do so.[10]

32. Wyndham and Warren worked on an application for Saluda during the summer and early fall of 1966. Because Wyndham had no familiarity with Commission forms, Warren helped him with most of the application, not just the engineering portions.

33. On September 12, 1966, Cook informed Warren that United had filed for Greenwood. Warren asked what frequency they had applied for. Cook responded 1090 kHz. Warren said that was the frequency he was considering for Saluda. Warren testified that, prior to that time, he had not known or speculated that 1090 kHz could be used in Greenwood.

34. Cook alleged that he was not concerned, at that time, about any conflict between the Saluda and Greenwood applications because he did not think Warren would file. Cook thought Warren would give up because United had beaten them to filing. However, Cook believed, at that time, that the Commission generally preferred providing a first facility to one community over a third facility to another (which would militate in favor of a grant to Saluda over Greenwood).

35. After learning of United's application, Warren and Wyndham re-evaluated the idea of filing an application for Saluda. Warren did not encourage or discourage filing, but left the decision to Wyndham. Warren informed Wyndham that the Saluda and Greenwood applications would conflict and they might, or might not, get a grant.

36. After United filed its application, Wyndham decided that he still wanted to pursue a station for Saluda and that he wanted Warren to remain his partner. They realized they would have to participate in a hearing.

37. It was necessary to retain another consulting engineer because Lambert had a conflict of interest. Warren called Greer, but he was not home.[11] Warren then called W. J. Holey, a Georgia consulting engineer.[12] Warren did not attempt to contact any other South Carolina consulting engineers prior to contacting Holey. Warren informed Holey that he (Warren) and Wyndham were going to file for 1090 kHz in Saluda and wanted Holey to do the engineering work on the application. Wyndham could not recall whether he and Warren had settled on 1090 kHz when they hired Holey, but he said that Holey conducted a frequency search and said that 1090 kHz was the only feasible frequency.

38. The understanding that Warren and Wyndham had regarding financing of the Saluda application was that each of them would contribute about $7500 to the venture. Warren, at that time, had assets of approximately $1200–1500 and one-half interest in a house in Arizona (the other one-half interest was owned by his sisters). Warren thought he could get a loan of $5000 on his interest in the house. He believed that he had good credit. Wyndham did not explain how he

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[10] As noted, *infra*, in this decision, Cook clearly *did* have an option open to use as a lever to *discourage* Warren's filing, at the very least, i.e., to tell Warren that, if he prosecuted his proposed application, he would have to give up his employment with WGSW. Cook either knew, or could have readily deduced, that Warren was entirely dependent on his salary from WGSW for his support and sustenance.

[11] Greer, of course, would have also had a conflict because he represented United.

[12] This was sometime in September or October 1966.

intended, at that time, to provide his share of the expenses. Wyndham's balance sheet, as of April 10, 1967, filed in Docket No. 18504, showed current assets of $7650, current liabilities of $3250, and net worth of $2800 (Official Notice taken).

39. After he and Wyndham decided to pursue the Saluda application, Warren informed Cook of this fact. When Cook was told by Warren, in October 1966, that Warren and Wyndham intended to go ahead with the Saluda application, he informed W. C. Woodall, who owned 37½ percent of Radio Greenwood, regarding these facts.[13] Cook knew that applications for the same frequency, in towns as close together as Greenwood and Saluda, would be mutually exclusive. Woodall advised Cook to call the station's Washington counsel to find out what action should be taken, and whether Warren could remain at WGSW. *Cook did not actually confer with Washington communications counsel until Warren indicated that he and Wyndham intended to file for Saluda, because he (Cook) was not concerned about Warren's interest in Saluda until it became apparent that Warren's intention to file an application was firm.*

40. After conferring with Washington communications counsel, Cook informed Warren that he would have to leave his employment with WGSW if he wished to continue in the Saluda application, or he could drop out of the Saluda application and continue to work for WGSW. Warren informed Cook, a day or two later, that he had decided to remain employed at WGSW and to drop out of the Saluda application.

41. When Warren decided to withdraw, C. Bruce Barksdale, whom Wyndham had approached in the summer of 1966 regarding participation in a station for Saluda, replaced Warren. On October 24, 1966, Warren wrote Holey, transmitting partial payment of $400 for engineering services, and informed Holey that he had elected to drop out of the Saluda venture in order to retain his job at WGSW. The $400 was supplied by Wyndham. The only expense incurred, prior to that payment to Holey, was the $150 paid by Warren to Lambert for the frequency search for Saluda. Because Wyndham had done some legal work for Warren without charge, Warren did not ask for any contribution by Wyndham for the $150 he had earlier expended.

42. Most of the work on the Saluda application had been completed when Warren withdrew. After Warren's withdrawal, Wyndham occasionally asked him questions regarding the application and sought his advice, but Warren did not actually do any physical work on it. Prior to filing of the SBC application, Wyndham relied solely on Warren for information regarding procedures for such filing. Cook asked Warren, after he had elected to stay at WGSW, if he had been discussing the Saluda application with Wyndham and Barksdale. When Warren replied that he had been discussing it, Cook reprimanded him and reminded him of his election to stay with WGSW and drop out of the Saluda venture.

[13] Cook leaves the impression that this was the first time he informed his principal associate what was going on in this connection. Assuming it to be true, the circumstance strengthens the Examiner's conclusions, *infra*, concerning Cook's "game plan."

43. Material filed with the SBC application shows that SBC was incorporated October 31, 1966. An equipment proposal for SBC from Gates Radio Company was dated October 31, 1966. A bank loan commitment for SBC was dated November 10, 1966. The SBC transmitter site agreement was dated November 16, 1966. The SBC application was filed with the Commission on November 16, 1966.[14]

THE 1966 SOUTH CAROLINA BROADCASTERS ASSOCIATION CONVENTION

44. At the South Carolina Broadcasters Association convention held in July 1966, Mullinax and Cook discussed the rumor that some persons associated with a Greenville station intended to file for a new station in Greenwood. Cook said he had last heard this rumor from Crosland, and he asked Mullinax if he knew anything about it. Mullinax said he did not. Cook told Mullinax he believed that someone would put a third station into Anderson before Greenwood, because Anderson was larger, and that he had heard of some interest in putting a station in Saluda. Mullinax said Saluda was too small for a station. The convention was held just after Mullinax had made arrangements for the second piece of land in Greenwood to be used for a transmitter site.

THE AUGUST 1966 MEETING BETWEEN COOK AND CROSLAND

45. Crosland testified that he telephoned Cook, in August 1966, to inquire whether Cook had any information about an application for a new station in Greenwood. Crosland wanted the information so he could "adjust and fortify [his] operation to meet any possible new competition." According to Crosland, Cook said he did have some information and would come over to Crosland's office, which, at that time, was four or five blocks away from Cook's office. Cook arrived about one hour after the telephone conversation.

46. According to Crosland, Cook said he had learned that two men associated with a Greenville station were going to file for 1090 kHz, 1 kw in Greenwood. Cook did not state how he had learned which frequency was to be used for the Greenwood application and Crosland did not inquire about it. Cook seemed visibly concerned about the additional competition and said the market would not support three AM stations. *According to Crosland, Cook said that Warren, WGSW's chief engineer, and Wyndham were planning to file for a station and had an engineering survey which showed that 1090 kHz was available for Saluda. Cook suggested that Grenco and Radio Greenwood consider encouraging the Saluda application, since it would conflict with an application for a new station in Greenwood.*[15] Cook did not further explain how they could "encourage" the Saluda application, and Crosland made no suggestion in that regard. Crosland testified that he told Cook he would not participate in encouragement of the Saluda application because the Commission could consider that as

[14] Official Notice taken.

[15] This statement also clearly supports the Examiner's conclusions, *infra*, concerning Cook's "adoption" of SBC's application as a "strike" application which he encouraged and which he openly used in an effort to bluff, at least, United into abandonment of its application.

fostering a strike application. *Cook replied that he did not want any trouble with the Commission and, therefore, would consult with WGSW's communications counsel about Warren's role in the Saluda venture, which, Cook said, was wholly personal and independent of WGSW.*[16]

47. Cook flatly denied meeting with Crosland in August 1966, and testified that he could not have spoken to Crosland about 1090 kHz in August 1966 because he did not know about 1090 kHz until Mullinax and Davenport informed him, in September 1966, that they had filed for 1090 kHz in Greenwood. Cook further testified that he never proposed to Crosland that they join forces to fight a third AM station in Greenwood. Cook stated that, in early summer 1966, he had casually discussed the rumors regarding a new Greenwood station with Crosland on the street and that Crosland said that the parties involved were from Greenville. Cook acknowledged that he talked to Crosland in October 1966 about the proposed third AM station and the financial effects thereof, but denied that he had discussed Warren's and Wyndham's interest in Saluda, or that he had proposed that Grenco and Radio Greenwood principals support a Saluda application.

48. Cook testified that he and Crosland are friends and that he was shocked at Crosland's testimony regarding these matters. On the other hand, Crosland testified that he has known Cook for about 17 years and regards him as a "clean competitor."

THE SEPTEMBER 12, 1966 MEETINGS[17]

49. On September 12, 1966, Mullinax and Davenport paid courtesy calls on Crosland and Cook to tell them that United's application for a new station in Greenwood had been filed. They visited Crosland first. According to Crosland, he told them that Grenco would not oppose them, but that he was skeptical that Greenwood could sustain three AM stations. He humorously told them that he wished they would file for Ninety-Six, a small town nine miles from Greenwood; and also said that Anderson, a community 44 miles from Greenwood, would support another station. But he did not suggest that they amend to specify Anderson. He suggested that they would have to run a tight operation, with as few personnel as possible. Mullinax and Davenport told him that they planned a country and western music format. Crosland did not make any notes regarding this meeting.

50. The main purpose for the visit to Crosland was to inform him of the United application, with a secondary purpose of finding out his attitude towards the application. The meeting was friendly. Mullinax generally confirmed Crosland's relation of what transpired at the meeting, but further alleged that Crosland said that Cook had approached Crosland about taking the 1090 kHz frequency outside Greenwood to Saluda, and that Crosland said he had told Cook that he would not be a party to such subterfuge. In response to advice of Greer during a telephone conversation about the Crosland meeting,

[16] An action which he did not take until *October 1966*, when SBC definitely decided to file.

[17] These meetings are chronicled in the affidavits discussed, *supra*, in paragraphs 5–14 inclusive. We treat now with the record testimony concerning these events.

and one on the same day with Cook, Mullinax typed out notes regarding this conversation on September 12, 1966.

51. Mullinax's typed notes regarding the visit with Crosland (United Ex. 7) generally confirm *his* claims as to what transpired.

52. Davenport confirmed that Mullinax typed notes regarding the visit to Crosland on the day of the visit. Davenport read the notes after they were typed and thought they were a true description of the meeting with Crosland. Greer received a copy of these notes in the mail a few days after September 12, 1966, and the notes agreed with Greer's recollection of what Mullinax had told him on the telephone on September 12, 1966, regarding the discussion with Crosland.

53. Mullinax and Davenport next met with Cook on September 12, 1966. According to Mullinax and Davenport, they told Cook they were filing for 1090 kHz, 1 kw, in Greenwood and that they wanted to be friendly competitors and were not going to undercut WGSW on advertising rates (although United had not yet prepared a rate card). Cook was friendly, but disturbed at the prospect of United's entry into Greenwood. He said the market could not take another station and that he was going to keep them out. Cook said he did not want them in Greenwood and asked them how much profit they anticipated in the first year of operation. Mullinax replied that, since Cook was already doing business in Greenwood, he ought to know. Cook offered to pay them their anticipated profits if they would not enter the market, and he talked about his Georgia associates having plenty of money. Davenport told Cook that United already had leases and had gone to much trouble and expense to file the application. Cook again offered to buy them out and told them to name their price. Mullinax and Davenport told Cook that they had not come to Greenwood to "shake down" the existing broadcasters; that they really wanted to operate a station in Greenwood; and that Davenport had grown up in Greenwood. As Mullinax and Davenport got ready to leave, Cook said that, if they did not stay out of Greenwood, he would cost them a lot of money. Mullinax asked how much and Cook replied $18,000 and eight years time. Cook said that he knew some people who would put a station in Saluda on 1090 kHz and that an application for Saluda would be preferred over an application for a third AM station in Greenwood.

54. Mullinax essentially corroborated Davenport in respect to what transpired at the meeting with Cook.

55. Cook testified that, when Mullinax and Davenport visited him on September 12, 1966, they told him they had visited Crosland, but did not relate what they had discussed with Crosland or that Crosland had mentioned Cook. Cook denied that he told them he knew an application for Greenwood had been in preparation; denied that he offered them their anticipated profits if they would withdraw; denied that he said he did not want any more competition; denied that he knew 1090 kHz could be used in Saluda, or that he knew people who would file for it for Saluda,[18] or that he stated his Georgia associate, Woodall, could pay them to withdraw the United application. Cook testified that

[18] Cook said that they discussed the financial impact of another station in Greenwood and that it would be difficult to support three AM stations. He also mentioned plans for a station in Saluda, but did not mention a planned frequency.

Mullinax and Davenport did say they had a transmitter site; that they had formed a corporation and had legal and engineering counsel; but Cook denied that he offered to reimburse them for these expenses if they would withdraw their application. Cook did not have any notes regarding this meeting, but said he refreshed his recollection of it when United filed its Petition for Enlargement of Issues in 1969.

56. After the discussion with Cook, Mullinax and Davenport returned to Greenville and Mullinax telephoned Greer. Mullinax related their conversation with Cook to Greer and Greer advised him to make notes regarding that conversation. Mullinax typed up notes on September 12, 1966. Davenport saw Mullinax's notes (United Ex. 6) the next morning and testified that he believed then, and believes now, that the notes are a fair summary of the events they describe. Greer testified that he received a copy of the notes in the mail shortly after September 12, 1966, and the notes agreed with his recollection of what Mullinax had told him on the telephone September 12, 1966, about the discussion with Cook.

57. Mullinax's notes (United Ex. 6) do not include any reference to Cook's alleged threat "to cost United $18,000" if Mullinax and Davenport would not withdraw the application (see paragraph 53, *supra*). Although Greer had told Mullinax that his notes could be important, Mullinax did not believe the notes would be important because he did not believe that Cook would go through with his threat. Mullinax had not mentioned the $18,000 "threat" in any pleadings before the Commission, and his testimony about it at the hearing was the first time the matter had been brought to the attention of the Commission.

THE FREQUENCY SEARCH FOR WGSW

58. Cook had a continuing interest in improvement of facilities for WGSW, and Warren was aware of that interest. Warren and Cook had discussed improvement of facilities for WGSW several times. Prior to the filing of United's application, WGSW had had some frequency searches made—one search for an FM frequency and one or two searches ordered by Woodall to see if WGSW could prove nighttime service, or go to 5 kw daytime power. After United filed its application, Cook contacted W. J. Holey and requested Holey to find out if any other frequencies besides 1090 kHz were available for Greenwood. Cook did not inquire about 1090 kHz (its availability being assumed because United had filed for it). Holey responded, by letter of September 16, 1966, and stated that the only available frequency which definitely complied with Commission Rules was 1090 kHz (B/B Ex. 7). Cook knew, when he received Holey's letter, that the coverage with 1 kw on 1090 kHz would be better than that with 1 kw on 1350 kHz (WGSW's facility), but he believed there was nothing he could do about that, and he never considered filing for 1090 kHz for WGSW.

59. Cook selected Holey to perform the frequency search, after United filed, because Holey had done the original application for WGSW, and his name was in their files. Cook had never previously

consulted Holey regarding engineering matters. This frequency search was the only one ordered by Cook for WGSW to that point in time.

60. Warren was not aware that Cook had called Holey in September 1966 to request a frequency search, and, during September 1966, he did not see Holey's letter regarding the results of that search. Warren did not discuss available frequencies for Greenwood with Cook after their September 12, 1966 conversation.

UNITED'S EFFORTS TO PERSUADE SBC TO CHANGE FREQUENCY

61. Mullinax, in late December 1966, requested that Greer conduct a frequency search for Saluda to see if SBC could utilize any frequency other than 1090 kHz and, thus, allow both applications to be granted without hearing. Greer made the search and established that 690 kHz could be used in Saluda with two towers, yielding better coverage than SBC's 1090 kHz proposal. United paid Greer for the search. Greer also informed Mullinax that 690 kHz could not be used in Greenwood. Mullinax requested that Greer give Holey, SBC's engineer, the information about 690 kHz and Greer subsequently told him (Mullinax) that he (Greer) had done so.

62. Greer confirmed that, in December 1966, a principal of United requested that he prepare a frequency search for Saluda and that the results were as depicted above. Greer spoke to Holey on the telephone on January 6, 1967, regarding the possibility of SBC utilizing 690 kHz. Greer took notes regarding that telephone conversation.

63. Greer's notes regarding the discussion of 690 kHz with Holey reveal that he telephoned Holey, pursuant to a January 4, 1967 discussion with SBC's communications counsel and Mullinax, during which they decided that Greer would propose to Holey that SBC change frequencies and that United would offer SBC its expenses to date in the 1090 kHz application. Greer called Holey and Holey said he would check 690 kHz, discuss it with SBC's principals, and then contact Greer. Greer told Holey that it would probably call for a two-tower directional antenna system and they discussed some technical matters. Greer told Holey that he would be in Atlanta in two weeks and could discuss the matter with Holey then. Greer and Holey did not meet in Atlanta.

64. On February 21, 1967, Greer wrote Holey to inquire whether Holey had discussed the possible frequency change with the SBC principals. Holey wrote Greer, on March 1, 1967, and stated that SBC did not want to amend to 690 kHz and that he could not recommend that they do so because of the excessive amount of field work that would be involved in an application for 690 kHz.

65. Greer's frequency search for Saluda did not alter his conclusion that 1090 kHz was the only usable frequency for Greenwood. He stated that, under the Commission's "no-go rule," an application which received interference was not acceptable in a town that already had a service, such as Greenwood; but, because Saluda did not have a first service, a 690 kHz application for Saluda would have been acceptable.

66. Greer also explained the differences between a non-directional operation on 1090 kHz and a two-tower directional antenna system

operation on 690 kHz at the time the United and SBC applications were pending. Because tower height and the length of a ground system are generally one-quarter wavelength, the 690 kHz operation would have required towers taller than the one tower required for 1090 kHz, and more land would have been necessary for the ground system. Greer estimated that the proposed 690 kHz operation would have required about 15 acres of land, compared to about four acres for the proposed 1090 kHz operation. He estimated that the additional costs for more and taller towers, more copper for a ground system, and other additional equipment costs for 690 kHz (not required for 1090 kHz) would have been approximately $15,000, exclusive of the additional real estate costs. Also, he explained that, in 1966, Commission rules required that a first-class operator be present at all times of operation of a directional antenna system, but not for a non-directional antenna; that a directional antenna system had to be on the air for one year without difficulties in operation before the Commission would authorize remote control; and that the Commission required certain weekly measurements for a directional antenna system which were not required of a non-directional antenna. Greer regarded Holey's determination that he could not recommend the 690 kHz operation to SBC as reasonable from an engineering standpoint.

THE MEETING OF MARCH 17, 1967, BETWEEN MULLINAX, DAVENPORT, AND WYNDHAM

67. Upon receipt by Greer of Holey's letter of March 1, 1967, stating that SBC was not interested in amending its application to 690 kHz, Mullinax and Davenport decided to discuss the matter with SBC's principals. A secondary purpose of the visit was to investigate the possibility that SBC's application might be a strike application. The meeting was to have included Barksdale, but he was out of town, so Mullinax, Davenport and Wyndham met in Wyndham's office. Mullinax and Davenport told Wyndham that they suggested that SBC switch to 690 kHz. Wyndham indicated that he did not know that 690 kHz was available for Saluda, and that he would consider it. Mullinax never heard from Wyndham regarding the proposal.

ACCORDING TO MULLINAX AND DAVENPORT

68. At the meeting, Wyndham remarked how successful WCRS owner Douglas Featherstone was and that he wanted to emulate him. Wyndham informed them that he had considered applying for a station in Greenwood, but that he did not want to anger his friend Featherstone, so he had decided he could emulate Featherstone in Saluda, which had no station. Wyndham also noted that Featherstone's offices were adjacent to his. Wyndham said he was a "protege" of Featherstone and inferred that the latter had helped pay his way through law school.

69. Wyndham expressed concern that Mullinax and Davenport might regard the SBC application as a "block" application. Mullinax and Davenport were surprised at his use of the word "block." Wynd-

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ham did not indicate who had been alleging that the SBC application was a block application. Mullinax did not recall whether he used the term "block" in speaking to Wyndham. Mullinax had always interchanged the terms "block" and "strike." Mullinax explained that he was surprised at Wyndham's use of the word "block," because Wyndham was not a communications attorney.

70. Davenport made an offer to reimburse SBC's expenses if it would amend its application to 690 kHz. Wyndham did not accept the offer. Mullinax, at this meeting, first learned of Warren's role in the Saluda venture. Wyndham explained that Warren's employers had made Warren choose between his employment at WGSW and pursuit of the Saluda application.

71. Mullinax explained his failure to inform the Commission of Warren's role in the Saluda application for a period of two years (until the filing of the Petition for Enlargement of Issues in 1969), saying that he did not know he could do anything with this information until the beginning of the hearing on the 1090 kHz applications, and that he had given the information to United's communications counsel soon after March 17, 1967.

72. Mullinax made some notes regarding the meeting on that day, and he represented the notes (United Ex. 10) as a true and correct portrayal of the meeting with Wyndham. Mullinax's notes generally confirm his version of what transpired at the meeting.

73. Mullinax's notes concluded with eight "Important observations" regarding Wyndham:

1. He seems to know the importance of 1090 in that pt. of the state.
2. He seems to look upon it as a law case.
3. Admits Warren helped & Warren got Holly (sic).
4. Places the date one year ago after talk started about 3rd G'wood station.
5. Knows nothing about radio.
6. Admits that it's Barksdale's money but quickly adds I'll pay my part.
7. Claims a close friendship with Featherstone.
8. Names several Greenwood B'casters but omits the name of Cook.

74. Regarding his "Important observations," Mullinax testified that he did not know what the fact that Wyndham looked at the matter as a "law case" meant. Wyndham used the word "case" in the conversation.

75. On March 17, 1967, upon his return to Greenville from the meeting with Wyndham, Mullinax typed up a set of notes based on the handwritten notes described above, and his independent recollection of the discussion. The typed notes (United Ex. 8) generally reiterated the material included in the handwritten notes and contain the following additional material: Featherstone seems to be a powerful influence over Wyndham. Wyndham admits that Featherstone encouraged Wyndham's entrance into broadcasting as a way to grow financially. When Davenport explained the possibility of using 690 kHz in Saluda, they discussed using 690 kHz in Greenwood, but Davenport said none of them knew enough about engineering to discuss it and he would have Greer send details to SBC. Wyndham said that his opinion that SBC could make a lot of money in Saluda was supported by Featherstone and other unnamed members of the Greenwood radio colony.

76. Other material included in the typed notes refers to the fact that Wyndham said his spots would be priced a little under Greenwood stations' prices and that he would need an announcer-manager or announcer-salesman for the station; that Wyndham referred to the SBC application as a "case"; that he did not once express compassion for the residents of Saluda or their needs; that Wyndham discussed some of the businesses in Saluda and the population of the city and the county; and that Wyndham told Mullinax and Davenport that SBC's communications counsel was Midlen and Harrison. The typed notes indicate that Mullinax and Davenport agreed that Wyndham did not once mention Cook or Crosland, although he made efforts to mention people on their staffs.

77. After Mullinax typed United Exhibit 8, he showed the notes to Davenport and asked if they checked with Davenport's recollection of the meeting. Davenport said they did and he did not make any changes or suggestions. Mullinax sent copies of the typed notes to Greer and United's communications counsel. Greer received a copy of the typed notes shortly after March 17, 1967, and the notes were in agreement with the information Mullinax had given him about the meeting during a telephone conversation between the date of the meeting and the date of Greer's receipt of the copy of the notes.

ACCORDING TO WYNDHAM

78. He did not mention Featherstone at all during the conversation with Mullinax and Davenport on March 17, 1967, or, if he did, he did not claim friendship with Featherstone since they had only met in 1967. Wyndham did not recall whether they offered to reimburse SBC if it withdrew its application. He may have told Mullinax and Davenport that he had become interested in a station about one year prior to the meeting, but he did not say that he became interested in a station when he heard rumors about a new Greenwood station. He did not deny discussing Warren's aid in preparation of the SBC application, and in securing the services of Holey, and that Warren had dropped out due to conflict of interest with his employment at WGSW. He recalled discussing directional antennas. He did not take any notes regarding the meeting.

THE MEETING OF APRIL 11, 1969, BETWEEN MULLINAX, DAVENPORT, AND CROSLAND

ACCORDING TO MULLINAX AND DAVENPORT

79. On April 11, 1969, Mullinax and Davenport visited Crosland. The purpose of the visit was to request that Crosland confirm affidavits executed by Mullinax and Davenport regarding the meeting of the three of them on September 12, 1966. Mullinax made some notes regarding the April 11, 1969 meeting upon Mullinax's return to Greenville on the same day. The notes (WGSW Ex. 4) state that, after some general conversation, Davenport told Crosland that he could help Davenport own a station by recalling the September 12, 1966 conversation. Crosland examined the materials which he was being asked to confirm and said that it did not sound like him. Crosland said that

he remembered some of the things set out in the affidavit, such as Anderson's need for another station and his suggestion that Mullinax and Davenport file for Ninety-Six, but he did not recall discussing the type of station that United planned and suggesting that they run it cheap and make money. The notes conclude with an observation that Mullinax knew Crosland ws lying because his hands shook, his voice quivered, and because Crosland had said he would give them an affidavit that they were there on September 12, 1966 before he read the document prepared by Mullinax and Davenport (WGSW Ex. 4).

80. Crosland said he would give them an affidavit stating that they had met on September 12, 1966, but not discussing the details of the meeting. Mullinax was only interested in having Crosland affirm their account of the September 12, 1966 meeting, and, when he refused to do that, Mullinax was not interested in some other sort of affidavit from Crosland regarding the meeting. Davenport did not agree that Crosland was lying. Davenport told Mullinax so while Mullinax was writing out his notes. That did not alter Mullinax's opinion. He did not ask Davenport why he (Davenport) did not think Crosland had been lying.

81. Davenport had known Crosland for a long time and considered him a man of integrity and not a man who would lie about these matters. Davenport believed that Crosland could not remember what had occurred at the first meeting and he (Davenport) expressed that view to Mullinax.

ACCORDING TO CROSLAND

82. When Mullinax and Davenport asked for an affidavit from him concerning their 1966 discussion, he read the affidavit they requested him to sign and felt it was their version of the meeting and did not sound like him. He refused to give them an affidavit because the events at issue had occurred a few years ago, and he would have wanted time to consider them and/or seek the advice of counsel before making such a statement. Mullinax and Davenport did not inform him of the purpose to which they would put his affidavit until the end of the meeting, at which time Davenport said that United was going to file a petition to enlarge issues and expected to own WGSW as a result. He recalled that, at the 1969 meeting, in response to a question from Mullinax and Davenport, he told them that Wyndham's office was next to Featherstone's office, and he also told them that he knew Barksdale.

83. Although, on April 11, 1969, he did not recall advising Mullinax and Davenport, on September 12, 1966, that they should run a cheap and modest operation, at the hearing he recalled giving that advice and he recalled other details of the 1966 meeting. A few days after the 1969 meeting, he began to refresh his recollection and make notes regarding the 1966 meeting. He did not offer to give Mullinax and Davenport an affidavit regarding the 1966 meeting after refreshing his recollection and consulting with counsel.

84. Mullinax, on rebuttal, did not recall Davenport remarking to Crosland that they would take over WGSW as a result of the petition to enlarge issues, but said it would have been a typical Davenport remark. He stated that, until the hearing, he did not realize Crosland's

age; he had believed Crosland was younger. Mullinax believes that Crosland's age may explain the shaking hands and quivering voice referred to in Mullinax's notes. Finally, Mullinax did not believe that his recollection and Crosland's recollection regarding their 1966 meeting are in disagreement and he understands now why Crosland would not sign the affidavit in 1969.

THE MEETING OF APRIL 14, 1969, BETWEEN MULLINAX, DAVENPORT, AND COOK

ACCORDING TO MULLINAX AND DAVENPORT

85. On April 14, 1969, Mullinax, Davenport, and United's communications counsel visited Cook. The purpose of the meeting was to persuade Cook to "withdraw his influence upon Saluda" and to persuade him to convince SBC to change frequencies or drop out. They showed him some materials dealing with strike issue cases and told Cook that the information they had regarding SBC could jeopardize WGSW's license renewal if a strike issue were raised by United. Cook responded that he had no control over SBC.

86. Davenport showed Cook an affidavit he had executed (United Ex. 13). The affidavit recited that, during the September 12, 1966 meeting between Cook, Mullinax, and Davenport, Cook offered to pay them if they would withdraw United's application, and that Cook said that, if they would not withdraw, he could get some people to file for the same frequency in Saluda (United Ex. 13). At the time Davenport executed the affidavit, and at the time of the hearing, he believed the affidavit to be true and correct. In preparing it, he relied upon Mullinax's notes of the September 12, 1966 meeting.

87. Mullinax prepared notes regarding the April 14, 1969 meeting with Cook. These notes (WGSW Ex. 4) generally confirm the version of the meeting asserted by Mullinax and Davenport. United's attorney never read the notes. Mullinax's notes were in agreement with Davenport's recollection of what transpired at the 1969 meeting.

ACCORDING TO COOK

88. At the 1969 meeting, United's communications counsel told him that a petition to enlarge issues would be filed unless SBC withdrew. Cook told Mullinax, Davenport, and United's counsel that he had told Warren to choose between WGSW and the Saluda venture. Cook denied offering to pay United to withdraw at the time of the 1966 meeting. United's counsel showed Cook two strike cases and told Cook to read them over and call him if he changed his mind about getting SBC to withdraw.

OTHER AFFIDAVITS RELATING TO THE PETITION FOR ENLARGEMENT OF ISSUES

89. The filing of the Petition for Enlargement of Issues prompted execution of affidavits by Featherstone and Cook. Featherstone's affidavit, executed May 20, 1969 (Grenco Ex. 2), recited that he was not

aware of Wyndham's interest in a radio station until he received a copy of the Petition on or about April 23, 1969; that he first met Wyndham in the spring of 1967, when he (Featherstone) moved his law offices into the building in which Wyndham had his office; that their meeting occurred several months after the filing of the SBC application; that he had never discussed applications for radio stations with Wyndham until after the filing of the Petition for Enlargement of Issues; that he never suggested to Wyndham that Saluda was a better place than Greenwood for the establishment of a new station; and that he had never been associated in business or professionally with Wyndham (Grenco Ex. 2).

90. Cook executed an affidavit May 16, 1969 (Grenco Ex. 4), in which he stated that, during the 1966 meeting with Mullinax and Davenport, he discussed the economics of a new radio station for Greenwood, but did not offer reimbursement if United would withdraw its application; that he was aware of Warren's interest in a station in Saluda, but had no knowledge of what frequency was under consideration; that, in October 1966, on advice of communications counsel, he told Warren to choose between employment at WGSW and participation in an application for Saluda, and that Warren elected to remain at WGSW; that neither Cook, nor his fellow owners of WGSW, encouraged, planned, or financed the Saluda application; that any assistance Warren may have rendered SBC was not rendered on behalf of Radio Greenwood; and that, at the April 14, 1969 meeting, when United's lawyer said that a petition for a strike issue against SBC would be filed unless Cook convinced SBC to withdraw, and that a strike issue could jeopardize renewal of WGSW's license, he (Cook) told United that he had no control over SBC.

91. Mullinax received Featherstone's affidavit (Grenco Ex. 2) after it was filed in response to the Petition for Enlargement of Issues, and he realized that there was a contradiction between it and his affidavit (B/B Ex. 6) regarding whether or not Featherstone suggested or persuaded Wyndham to file for Saluda. Mullinax denied that his affidavit reference to Featherstone and Wyndham having adjacent offices (B/B Ex. 6, paragraph 10) was misleading, in that Featherstone had not even moved into the same building at the time of Mullinax and Davenport's March 17, 1967 conversation with Wyndham, because Mullinax had the impression that, as of March 17, 1967, Featherstone had either moved into the adjacent offices or was planning to do so. Mullinax did not examine the offices next to Wyndham's after talking to Wyndham.

DISMISSAL OF THE SBC APPLICATION

92. On December 10, 1969, SBC filed a petition requesting dismissal of its application, which was subsequently granted.[19] The principal reason for the dismissal request was that it was financially unfeasible to continue. SBC had spent $8,000–10,000 for legal counsel over a four-year period. SBC's counsel indicated that it might require another

[19] Official Notice taken (see paragraph 4 of the Initial Decision in Docket No. 18503, FCC 71D–72, released October 19, 1971).

$4,000–5,000 to pursue the hearing to its conclusion. SBC, on the advice of Warren and its counsel, originally anticipated obtaining a construction permit with expenditures of $3,000–5,000. SBC had anticipated prevailing in the hearing, because Saluda did not have any stations, whereas Greenwood already had services. SBC had also expended at least $2,000 for engineering services during the course of the proceeding. SBC had never obtained an estimate of the total anticipated engineering costs to prosecute its application.

93. Another reason stated for the dismissal request was that Saluda's small size made it economically unfeasible to pursue the application. This constituted an apparent contradiction of Wyndham's explanation regarding the reasons for the choice of Saluda initially, but is tenable based on subsequent events. The population of Saluda County had not grown since 1950, though Wyndham originally anticipated some growth.

94. Wyndham met his share of the SBC expenses from his legal earnings, and he never actually borrowed money for the pursuit of the application, although he had arranged for a loan in order to make a financial showing in connection with the SBC application. The loan arrangements were made either at the suggestion of Warren or SBC's communications counsel, he could not recall which.

MISCELLANEOUS CONSIDERATIONS

95. Featherstone, the owner of Grenco, was unable to testify personally in this proceeding because of his physical condition (Grenco Ex. 1). But his affidavit (Grenco Ex. 2) is part of the record and is essentially uncontradicted in its showing of innocence of any "strike" participation.

96. Grenco did not financially, or otherwise, support SBC's application or oppose United's application. Crosland did not meet Wyndham until 1971. He has spoken to Warren only twice, both times regarding subject matter unrelated to this case. He did not know Mrs. O. C. Swindle, part owner of Radio Greenwood. He met Woodall when Woodall received the grant for WGSW, but had not seen him for many years prior to this proceeding. He did not converse with either Wyndham or Warren, and he had not discussed these matters with any WGSW employees.

97. Greer worked for Grenco until April 1965. Crosland's last discussion with Greer, prior to this proceeding, was in 1965, and that discussion did not involve available frequencies for Greenwood.

98. Wyndham confirmed that he did not meet Crosland before the summer of 1970.[20] He had not been reimbursed directly or indirectly by the principals of Grenco, or anyone on their behalf, for expenses incurred in the SBC application. Neither he nor his law partner represents the principals of Grenco, or any of their enterprises.

99. Warren has never worked for Featherstone, Crosland, or WCRS–AM or FM.

[20] Though Crosland said 1971 and Wyndham said 1970, the disparity is immaterial since the meeting was significantly after the events in issue.

100. Mullinax testified that the only evidence implicating Grenco, in his opinion, was Wyndham's mention, at the March 17, 1967 meeting, of his relationship with Featherstone and that he did not believe Crosland had aided SBC. Davenport testified that he now believes Wyndham tried to impress them by asserting a friendship with Featherstone that did not really exist, and that he does not believe Wyndham was acting in concert with Featherstone or Crosland in SBC.[21]

101. Cook did not personally, or through Radio Greenwood, or any other source, advance funds for the Saluda application. He alleges that he did not participate in the planning, preparation, or prosecution of the SBC application, or authorize anyone else, including Warren, to do so. He alleges that he did not authorize Warren to work on the Saluda application on WGSW time, or to use WGSW as a business address on Saluda correspondence, and he was not aware that Warren did so.[22] Cook says he never saw Lambert's letter to Warren with the results of the frequency search (B/B Ex. 2), which was addressed to Warren at WGSW. He believed that Warren would have been too busy with his work at WGSW to work on the Saluda application there.

102. Warren received no direct or indirect compensation from Radio Greenwood in 1966–1967, except his salary, an allowance for car expenses for news gathering, and a Christmas bonus of the same amount given all Radio Greenwood employees ($100 or $125). Warren's salary in 1966–1967 was $130 to $135 per week. Warren left the employment of Radio Greenwood in January 1971. At the time of hearing, Warren was not employed by Radio Greenwood, was receiving no compensation from Radio Greenwood, and there was no agreement to reemploy Warren at any time in the future.

103. Cook had no relationships with the individuals or institutions that pledged to make loans to SBC in connection with the SBC application. He knows Barksdale, but has no business or investment relationship with him.

104. The only consulting engineers who have done work for WGSW are Lambert and Holey. Prior to April 1966, Lambert had done some engineering work for WGSW, which had been arranged by Warren as chief engineer. The fee for the work was about $50. Cook testified that he was not aware of Warren's letter of April 20, 1966, to Lambert (B/B Ex. 1), and the fact that Warren had contacted Lambert regarding available frequencies. Lambert did some pre-sunrise authority work for WGSW in 1967, which had been arranged by Warren.

105. Woodall is a resident of Dawson, Georgia. He knew Warren to be an employee of WGSW. He took no steps to discourage prosecution of the United application and did not authorize anyone else to do so on his behalf. He did not learn about the United application until one or two days after it was filed, and did not learn of the SBC application until shortly after it was filed. He met Wyndham for the first time

[21] All of the parties to this proceeding now agree that Crosland and Grenco are blameless in respect to the issues in this proceeding.

[22] Warren, in his letter of April 20, 1966, requested Lambert to call him collect at Warren's office (B/B Ex. 1).

at this proceeding and does not know Barksdale. Neither he, nor anyone authorized by him, contacted Wyndham or Barksdale regarding the SBC application.

106. Woodall has known Holey for 25 years, and Holey has done work for some of the stations with which Woodall is associated, including WGSW. Woodall does not consider Holey to be the consulting engineer for WGSW. Holey is not on retainer for any of Woodall's stations and WGSW has used other consulting engineers.

107. Woodall's stations have frequency searches performed periodically to see if they can improve their facilities.

108. Woodall was not aware that Lambert had ever done consulting engineering work for WGSW, and he did not recall an application for pre-sunrise authority in 1967. Cook could have filed such an application without obtaining Woodall's approval. Routine expenditures for WGSW did not have to be reported by Cook to Woodall. Cook has authority to make decisions involving the station during the periods between Radio Greenwood Board of Directors meetings (Woodall, Cook, and Woodall's mother-in-law, Mrs. Swindle, constitute the Board of Directors). Woodall and Mrs. Swindle take no role in the day-to-day operation of the station; that is left to Cook. Cook would have had authority, in 1966, to give Warren a raise without consulting Woodall or Mrs. Swindle.

109. Woodall did not recall visiting WGSW during 1966. The annual Board of Directors meeting for 1966 was probably held in Dawson, Georgia. He did not recall talking to Warren during 1966. He was unaware that Warren was leaving the employment of WGSW until after he (Warren) had left, and he did not know why he left. As a general policy, all of his stations give Christmas bonuses. He did not attend the South Carolina Broadcasters Convention in 1966.

110. Mrs. Swindle did not testify in this proceeding. In an affidavit executed June 15, 1971, and received in evidence, she stated that she is 77 years old, is not active in the affairs of WGSW, and has no knowledge of, or information concerning, principals or agents of Grenco or Radio Greenwood supporting, or participating in, the SBC application in order to impede or obstruct the United application (WGSW Ex. 1).

111. Wyndham did not meet Cook until some time after he had met Warren. He alleged that he never discussed the SBC or United applications with Cook. He does not know Woodall or Mrs. Swindle. None of the principals of Radio Greenwood have reimbursed him directly, or indirectly, for the expenses he incurred in preparation and prosecution of the SBC application. Neither he, nor his law partner, has ever been counsel for any of the principals of Radio Greenwood or any of their enterprises. He did not believe that Warren or anyone else "used" him in the SBC application. He approached Warren about constructing a radio station and Warren never pushed him into the events at issue.

112. Warren had no bank accounts from January to March 1966. On April 1, 1966, he opened a checking account with a deposit of $1,400, which was a loan from a bank for purchase of a car. A few days later, a check for approximately $1,400 was drawn on the account to

pay for the car. He made all the payments on the car loan without assistance from Radio Greenwood or its principals. The only large entry in the account was a deposit of $1,500 on October 18, 1966. None of that sum came from Radio Greenwood or its principals.

113. WGSW loaned Warren $600 in January 1968, so he could pay an accumulation of small bills. He repaid the loan completely, without interest; the last payment being made September 13, 1968. Warren never received any other loans from the station.

114. Warren presently resides in Chesterfield, South Carolina, which is 157 miles from Greenwood. He is not presently doing any work for WGSW. He has no agreement or understanding with Radio Greenwood or its principals that he will be employed by them in the future.

115. Warren never discussed the Saluda application with Wyndham or Barksdale on the premises of WGSW. He never discussed his participation in the Saluda application with Woodall.

116. Warren testified in this proceeding on October 1, 1971, and November 12, 1971. He came to Washington two days prior to the first date he was scheduled to testify, in order to go over some of the material that was covered in the hearings conducted in Greenwood. This was done at the suggestion of Radio Greenwood's counsel. Warren went to Radio Greenwood's counsel's office and read some of the transcripts of this proceeding.

117. When he came to Washington, September 29, 1971, to testify on October 1, he and Cook flew to Washington on the same airplane, after meeting in Greenwood. Warren had come to Greenwood to pick up documents required for production at the hearing. Warren had informed Cook of the date on which he planned to come to Washington, and Cook indicated that he would come to Washington on the same date. Cook made the hotel reservations for both Warren and himself, and Cook made airline reservations for their return flight to South Carolina on October 1. Warren's expenses for his stay were not reimbursed by Radio Greenwood, its principals, or its counsel.[23]

118. Warren and Cook did not travel to Washington together for Warren's November 12, 1971 testimony. While in Washington, they stayed at the same hotel, but Cook had not made Warren's reservation. Warren had no knowledge of Cook's travel arrangements to return to South Carolina after the hearing, and he (Warren) did not discuss any aspects of this proceeding with Radio Greenwood, its principals, or its counsel during the time between his two appearances in this proceeding.

119. No party to this proceeding suggested to Warren that he retain counsel for the proceeding. His decision to do so was his own. None of the principals of Radio Greenwood, or its counsel, had indicated willingness to reimburse Warren for his legal expenses in this proceeding, and Warren intended to pay those expenses himself.

120. Thirteen persons with lengthy acquaintance with Cook affirmed that Cook has a reputation in Greenwood for truthfulness.

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[23] The Bureau subpoenaed Warren and, accordingly, the government reimbursed Warren's travel and accommodation expenses.

Conclusions

1. We come now to the ultimate determination of the question of whether the principals or agents of Grenco, Inc. and/or Radio Greenwood supported, or otherwise participated in, the preparation of the application of Saluda for the purpose of impeding or obstructing a grant of the application of United for a station at Greenwood. The issue is commonly referred to as a "strike" issue.

2. As the Commission stated in paragraph 4 of its designation order, a strike application is one whose principal, or incidental, motive or purpose is to obstruct or delay another application. The Commission noted that the guidelines to be used to determine whether an application is a strike application are: "(1) the timing of the application, (2) the economic and competitive benefit occurring from the application, (3) the good faith of the applicant, and (4) questions concerning a frequency study." Other factors which test the *bona fides* of the application include such determinations as: whether the purported strike applicant selects the same engineering and legal counsel as the licensee allegedly supporting the new application, and whether the community selected by the new applicant is a community genuinely able to support a station, etc.

3. We deal now with the possible involvement of Grenco in the Saluda application. The only item which might connect Grenco to SBC is Wyndham's statement regarding Featherstone's influence over Wyndham's selection of Saluda, and Featherstone's possible encouragement of Wyndham in the venture.

4. It is concluded that such remarks by Wyndham were false and were an exaggeration designed to impress the United principals. As the findings reflect, Featherstone first met Wyndham in the spring of 1967, long after the SBC application had been filed. Therefore, the alleged remarks of Featherstone could not have been made to Wyndham.

5. Crosland's revelation to Mullinax and Davenport that Cook, in August 1966, had proposed fostering a strike application against United is not an act which, if Grenco were a strike co-conspirator or participant, he would rationally undertake. Crosland's testimony relating to this matter is accepted as accurate and truthful, along with his rejection of Cook's proposal (note further discussion of this matter in paragraph 9, *et seq.*, *infra*).

6. Accordingly, it is found and concluded that Grenco and its principals have not participated in, or encouraged, the SBC application. It is further found and concluded that a grant of the applications of Grenco, Inc. for renewal of license for Stations WCRS and WCRS-FM would serve the public interest, convenience, and necessity, and such applications should be granted.[24]

7. We turn next to the possible involvement of Radio Greenwood with the filing of the SBC application. While the findings do not establish any connection between two of the principals of Radio Greenwood—Woodall and Mrs. Swindle—and the SBC application, the con-

[24] This conclusion is endorsed by all the parties to this proceeding.

duct of the third principal of Radio Greenwood—Cook—cannot be resolved in the same manner.

8. There is the conflicting testimony of Cook and Crosland as to whether they met in August 1966 and whether, at that meeting, Cook revealed knowledge of the frequency proposed by United for use in Greenwood and invited Crosland to join him in opposing the proposed application for a new station in Greenwood. There is also conflicting testimony as to whether Cook, at the September 12, 1966 meeting with Mullinax and Davenport, offered to pay them their anticipated revenues and expenses to that date if they would withdraw the United application, and as to whether Cook threatened to obstruct United's application through an application for Saluda when Mullinax and Davenport refused his offers. There is the further conflicting testimony (Cook on the one hand, and Mullinax and Davenport on the other) as to whether Cook told Mullinax and Davenport that he was going "to keep you out if I can"; that "It won't be hard. I have a hungry lawyer [25] and rich kid [26] who have little enough sense to take it out of town"; that "[if Saluda can't support a station] We can help him get some Greenwood business, and we have more than we can put on"; and "[if United files for some other frequency] there are other little towns around and we'll cross that bridge when we get to it." (WGSW Ex. 3).

9. As detailed in the paragraphs which follow, the findings support the ultimate conclusion that Cook did invite Crosland to participate in obstruction of the planned United application for 1090 kHz in Greenwood in August 1966; that after the United application was filed, Cook did offer to reimburse United to withdraw; and, when his offer was declined, threatened to obstruct the application.

10. Wyndham's and Warren's interest in establishing a broadcast station had its genesis in late 1965 or early 1966. The first significant overt act to bring their plan to fruition was the request to a consulting engineer, on April 20, 1966, that a frequency search be made for Saluda. The report of this frequency search was dated May 10, 1966 (see findings, paragraphs 28 and 29). Warren discussed his proposed application with Cook in April 1966 (see findings, paragraphs 30 and 31). Cook evidenced his concern, as early as July 1966, about the possibility that another station might be established in Greenwood. This is reflected in his queries to Mullinax during the state broadcasters' convention in that month (see findings, paragraph 44).

11. In February and March 1966, United commenced its search to obtain an antenna site in Greenwood. The activities in this connection continued through July 1966 (see findings, paragraphs 16, 17 and 18). United's community survey activities in Greenwood were conducted in June and July 1966 (see findings, paragraph 23). While Mullinax was looking for an antenna site and talking to people in Greenwood, he *was not certain* whether, in March 1966, he identified to outsiders the frequency proposed for use by United in Greenwood (see findings, paragraph 17). Mullinax, Davenport, and the real estate brokers acting in

[25] Wyndham.
[26] Barksdale.

their behalf, contacted various people in Greenwood during this interval and no one knows to what extent there may have been a revelation of the details of United's proposed application.

12. Holey, who produced the frequency search report for Warren, had done consulting work for WGSW and for Woodall, one of its principal stockholders and a multi-station owner, on various occasions over a span of 25 years.

13. Early and prompt identification of the frequency under consideration by United, and under consideration for Saluda, could have leaked out from any of the foregoing potential sources. That Cook would be strongly motivated to obtain all the information he could about his potential competitor in Greenwood, including the possible frequency which might be used, is both reasonable and logical. Likewise, to ascertain the frequency proposed to be used by Warren in Saluda would be a natural, reasonable, and logical pursuit by Cook because of its relationship of the competitive efforts of United and the employer-employee affinity of Warren. It is concluded that Cook did obtain knowledge of the proposed use of 1090 kHz by United and SBC, respectively, at a point in time very proximate to the time that each such entity came into the knowledge that it was the only frequency available for the proposed use.

14. That Cook met with Crosland in August 1966, or at some time prior to September 12, 1966, is indisputably clear despite Cook's denials. Crosland testified that such a meeting took place; that Cook knew the frequency proposed for use by United; that Cook knew of the proposed use of the same frequency by Warren and Wyndham in Saluda; and that Cook proposed joint action by Grenco and Radio Greenwood to frustrate successful prosecution of United's application. Cook testified that the meeting did not take place prior to September 12, 1966; that he did not know, prior to September 12, 1966, the frequency proposed to be used by United or the frequency proposed to be used in Saluda; and that he did not propose the joint effort to frustrate United's application.

15. Mullinax and Davenport testified that, at their meeting with Crosland on September 12, 1966 (which took place before their meeting with Cook on the same date), Crosland advised them of the details of his meeting with Cook in August 1966. This circumstance poses a single clear question. Either Crosland testified falsely about the August 1966 meeting and falsely related the story of that meeting to Mullinax and Davenport on September 12, 1966, or Crosland's testimony, and that of Mullinax and Davenport, as to what transpired on September 12, 1966, is true. As noted in paragraph 5 of the conclusions, Crosland's fabrication of such a story would not be rational and does not appear to be based on any tenable explanation other than it is true. It is concluded that his recital of that incident to Mullinax and Davenport on September 12, 1966, was the spontaneous expression of truth.

16. Crosland's demeanor at the hearing was that of an earnest and honest elderly gentleman [27] endeavoring to speak the truth to the best

[27] Crosland was 67 years of age at the time.

of his ability. It is the conclusion of the Examiner that the testimony of Crosland, Davenport and Mullinax concerning this event is true.

17. It is a fact that, when Crosland was later requested to put the details of the 1966 meeting with Cook in affidavit form for Mullinax and Davenport, he refused to do so. His refusal, upon reflection, and without specific advice of counsel, is understandable. He obviously perceived, from the context of his meeting with Davenport and Mullinax on September 12, 1966, that he and his organization were becoming embroiled in a very sticky situation which might endanger the status of WCRS and WCRS–FM. The refusal to deliver such an affidavit, *at that time*, was not a denial or a recantation of what he had earlier said. Indeed, in this proceeding, he testified freely and completely concerning the transaction in question.

18. The Mullinax and Davenport version of what transpired at the September 12, 1966 meeting was contemporaneously reduced to writing by them and relayed contemporaneously to their consulting engineer, Greer. Though the relay of such information to Greer constituted hearsay so far as Greer is concerned, his confirmation of the contemporaneous receipt of the information and its content is entitled to significant weight in reaching a determination as to the truth of the matters involved. That occurrence is, in a sense, part of the *res gestae*. The same observation obtains with respect to the Davenport and Mullinax testimony and notes concerning the matters which transpired between themselves and Cook at their meeting with him on September 12, 1966.

19. To find that Cook's testimony regarding these various matters is true would necessitate a finding that Cook is the victim of a conspiracy by Crosland, Mullinax and Davenport, at the very least. That conclusion is untenable.

20. The evidence establishes that one of the two persons responsible for initiating the Saluda application, and doing the bulk of the work involved in completing the application, was the chief engineer at Cook's station. Cook and Warren acknowledge that Cook was aware of Warren's interest in Saluda as of April 1966, prior to the filing of United's application, but approximately the same time that United's principals began contacting people in Greenwood regarding matters concerning their application. Cook's and Warren's testimony that they did not discuss the frequency a Saluda application would utilize and that they had no further discussions regarding the Saluda proposal between April and September 1966 is not plausible or believable. They acknowledged in their testimony that they discussed how well a Saluda station would cover Greenwood. Of course, that coverage would depend in significant degree on both the proposed power and frequency, and those data were surely revealed.

21. Cook stated that Warren was a valued employee of WGSW, but that, in October 1966, he told Warren he would have to leave the station if he applied for Saluda. Yet, Cook would have us believe that he was never interested enough in whether he would have to arrange to replace Warren as to warrant inquiry about the progress of Warren's plan for a Saluda station. Nor, apparently, was he concerned that such

station might be competitive with WGSW. These facts also strain credulity.

22. It is clear, from the findings, that Warren continued as an interested participant in the Saluda application, even after United had filed for Greenwood, and until shortly before SBC filed for Saluda. However, it became apparent to Cook, in October 1966, that Warren's continued association with an *actually filed* application for 1090 kHz in Saluda in competition with the United application for Greenwood would overtly cement, *for all the world to see*, Cook's interest in obstructing United's application, since Warren was still an employee of WGSW. Thus, it is clear why Cook told Warren, in October 1966, he could not remain employed at WGSW if he actively prosecuted the Saluda application.

23. There is some evidence to suggest that the Saluda application may have been less than completely *bona fide*. Warren and Wyndham contemplated a substantial capital investment (approximately $15,000) in the Saluda application, but neither had assets of much substance at the time they made these plans. Wyndham had only begun his law practice about one year prior to the time he entered the planning of the Saluda application, and he had short-term and long-term notes totaling about $10,000, in addition to a mortgage, as of a few months after the application for Saluda was filed. Furthermore, Wyndham did not explain or establish that his income was sufficient to absorb substantial personal losses of approximately $5,000 incurred in prosecution of the SBC application. Warren had savings of no more than $1,500 plus one-half interest in a house of undetermined value. Either Wyndham and Warren did not, in fact, contemplate carrying through with the application, or they anticipated financial aid from other sources, or they approached the entire matter naively and foolishly. The facts of record in this case lead to the latter conclusion.

24. In an affidavit filed with a pleading responsive to United's Petition to Enlarge Issues to include a strike issue against SBC, Wyndham stated that Saluda had been chosen as the location for the SBC application because it was a growing community able to support a station. After a strike issue was added to the SBC-United proceeding, SBC requested dismissal of its application and stated that Saluda had not shown population growth over recent years and was not large enough to enable SBC to recoup its investment in its application. This circumstance is plausible and inconclusive as to any showing of bad faith.

25. The Saluda application was conceived in, or before, April 1966. The activities of the Saluda principals in respect to a frequency search in April 1966 corroborate this fact. The facts that SBC was not incorporated until October 31, 1966, and an equipment proposal from Gates Radio Company was obtained October 31, 1966; that a bank loan commitment for SBC was dated November 10, 1966; that the transmitter site agreement for SBC was dated November 16, 1966; and that the SBC application was filed on November 16, 1966, do not denigrate the conclusion as to the date when the application was conceived. Though the formal SBC application may have been hastily thrown together and filed after the filing of the United application, this circumstance

no more reflects bad faith than an honest effort by the naive principals to attain a competitive comparative status.

26. For its engineering counsel, the principals of the Saluda application hired two men—both of whom had done engineering work for WGSW. This fact may follow logically from the fact that Warren was the chief engineer of WGSW, or it may be a circumstantial link connecting WGSW and the SBC application. SBC and WGSW did not have the same legal counsel. It was Warren who did all of the contacting regarding frequency searches by the two consulting engineers. Indeed, he made the contacts from the offices of WGSW and informed one engineer to call him there collect in 1966. Correspondence from one of the engineers was addressed to him at WGSW. However, absent proof of overt knowledge and *participation* therein by Cook, these circumstances are not enough to charge WGSW with a strike application.

27. It is self evident that economic and competitive benefits would have accured to Cook and WGSW if the SBC application were granted rather than the United application. While a Saluda station would put a signal into Greenwood, it would still not be a local station for Greenwood. Moreover, it would be preferable to be competing with a station 30 miles from Greenwood, operated by individuals with no broadcast experience, than to be competing in Greenwood with a station operated by experienced broadcasters.

28. Both Wyndham and Warren testified that each of them considered Wyndham to be the moving force in the Saluda application. Wyndham exaggerated his relationship with Featherstone. Virtually all of Wyndham's decisions were based on the advice of Warren.

29. While Warren appears to have cooperated with his former employers—Radio Greenwood and Cook—to some extent in respect to his participation in the hearing in this case (i.e., Warren traveled to and from Washington for his first day of testimony with Cook, and, at the suggestion of Radio Greenwood's counsel, Warren came to Washington in advance of his appearance as a witness in order to look over the transcripts of this proceeding), it must be noted that, in so doing, he was acting primarily in his own interest to facilitate his preparation for appearance as a subpoenaed witness.

30. Putting the facts of this case in their best light (i.e., in a posture most favorable to Cook), it is concluded that Warren and Wyndham, independently of Cook, or any other Radio Greenwood principal, conceived a *bona fide* intention and plan to establish a broadcast facility in Saluda in late 1965 or early 1966, and they undertook the actions detailed in this decision to further that plan. The inception and execution of that plan contemporaneously with the activities of United in formulating and implementing its plan to put a station in Greenwood was purely coincidental.

31. Cook, having learned of United's intention and activities, as well as those of Warren and Wyndham, in the spring of 1966, determined to capitalize on the situation and to use the activities of Warren and Wyndham as a lever to discourage United in the consummation of its planning. Presumably, Warren and Wyndham did not know that they were being used in that fashion.

32. Cook clearly and avowedly evidenced his desire and intent to use the Saluda applicant's activities to his own advantage, in an effort to block United, by his statements to Crosland in August 1966, and by his statements to Mullinax and Davenport on September 12, 1966.

33. One may very well wonder why Cook would apparently be so naive or crass as to announce to Mullinax and Davenport his intention and desire to block their application. The answer rests upon the logical conclusion that Cook believed (1) that he could successfully deny having made such statements to Davenport and Mullinax, and (2) that he would either succeed in scaring United out of the picture or, if his bluff did not work, Warren and Wyndham would abandon their proposal because of the obvious economic burden which would have to be undertaken if they filed and went into a comparative hearing. Cook obviously knew that Barksdale (a man with money) was off in the wings as a putative investor for Saluda, and he used that knowledge, too, in his dealings with United. But, privately, he evidently did not seriously think that Barksdale would come into the picture, particularly if a comparative hearing were required.

34. Cook played the game to the point where, United having filed in September 1966, he expected Warren and Wyndham to quit. When it became evident that Warren and Wyndham were going to file nonetheless, Cook realized that Radio Greenwood might encounter trouble. He then consulted Woodall and, at the latter's suggestion, consulted his communications counsel. As a result of that consultation, he presented Warren with the alternative of leaving his employment with Radio Greenwood or prosecuting the Saluda application. Warren elected the former option, withdrew from Saluda as a principal, and was replaced by Barksdale.

35. There now arises the question whether, in the circumstances related above, Cook engaged in activities which meet the criteria for determination as to *participation* in a strike application.

36. The criteria relating to strike applications set out in paragraph 4 of the Commission's Designation Order in this proceeding are germane only to a determination as to whether a particular application is a strike application under conditions where its *bona fides* must be tested against *circumstantial* criteria because there is no openly *announced intent* by the applicant that the application is a strike application. In this case, the criteria are neither applicable nor pertinent. *Cook publicly avowed that his interest in the application was in the context of a strike application.*

37. Upon the conclusions set forth, the Saluda application is presumed to have been prepared and filed as a *bona fide* application *by the principals of SBC.* Contemporaneously, it is demonstrated that Cook embraced this application as a vehicle to launch an effort to block United. He clearly so stated. Because he encouraged Warren and Wyndham to bring them to the threshold of filing such an application, motivated by a desire to block United, it is clear that *he used the SBC transaction as his own strike vehicle, entirely independent of the actions or motivations of the SBC principals.* It is the conclusion of the Hearing Examiner that Cook's actions were sufficient, as a matter of law, to make Cook's activities fall within the prohibition relating to strike applications.

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38. Now we come to the question as to what action Cook should have taken, in the circumstances, if he really desired not to actively and overtly foster the SBC application as a strike vehicle. In paragraph 31 of the findings, it is noted that Cook acknowledged that a station in Saluda might afford his station potential competition, but that he claimed that he was unable to do anything about it because he could not prevent Warren from filing. Yet, when the chips came down after September 12, 1966 (when it became clear that Warren and Wyndham intended to file), Cook gave Warren the ultimatum about leaving the employ of WGSW or prosecuting the application. It is evident, therefore, that the very least that Cook should have done, and could have done, was to present Warren with this alternative much earlier in the game, i.e., as soon as he became aware of the potential conflict between Saluda and United early in 1966. While this might not have resulted in preventing the filing of an application by SBC, it would have clearly demonstrated Cook's good faith in the situation and would have comported with *his* denial of participation in a strike situation. His failure to take this action, coupled with his public utterances concerning his motives and intent in respect to the Saluda applicant's activities, is sufficient to fix upon him the responsibility for encouraging and fostering what was, *for him*, a strike application.

39. A further word is appropriate concerning Cook's testimony on the matters where the issue of credibility has been decided adversely against him. It follows, from these conclusions, that Cook seriously and substantially perjured himself in respect to material matters testified to in this proceeding. His character is not in issue in this proceeding. Therefore, it may be that there is no action which the Commission can take in respect thereto in any final order flowing from the resolution of *this proceeding*. It is recommended that the Commission consider what other action may be appropriate in this connection within its jurisdiction, as well as the advisability of referral of this matter to the Department of Justice for its appropriate action.[28]

40. Thus, it is found and concluded that Cook, a principal in the ownership and operation of WGSW, owned and operated by Radio Greenwood, supported and otherwise participated in the preparation and filing of the application of Saluda Broadcasting Company, Inc. (as set forth *supra*) for a new radio station at Saluda, South Carolina (File No. BP-17529, Docket No. 18504) for the purpose of impeding or obstructing grant of the application of United Community Enterprises, Inc., for a new radio station at Greenwood, South Carolina (File No. BP-17439, Docket No. 18503).

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[28] This perjury by Cook, standing alone, should suffice to justify a denial of the renewal of license for Station WGSW. The importance of candid and truthful relationships between applicants and licensees, on the one hand, and the Commission, on the other, need not be labored here. Indeed, it is fundamental that "[t]he fact of concealment [or false statement] may be more significant than the facts concealed [or the substance of the false statement]." *WOKO, Inc.*, 329 U.S. 223, at p. 227.

It is urged by the Examiner that the Commission adopt a policy reflecting the fact that, as a matter of law, there is, in every case, an implicit character issue for consideration in respect to the truth and veracity of the testimony of every witness who is a principal, or a person under the control of a principal, of an applicant or licensee, in a hearing case. This character issue is to be distinguished from one which might arise in respect to consideration of *other* facts developed in a hearing which may have a bearing on character and as to which it is necessary to inject a specific issue in order to apprise the affected party as to what issue he must meet in the hearing.

In short, the matter of the veracity of *testimony* at the hearing is *always* an *implicit* issue which every witness must be inherently aware of.

41. Consequently, it is further found and concluded that a grant of the renewal of license application of Radio Greenwood, Inc. for Station WGSW, Greenwood, South Carolina, would not serve the public interest, convenience and necessity, and such application should be denied.

Accordingly, IT IS ORDERED that, unless an appeal to the Commission from this Initial Decision is taken by a party, or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the applications of Grenco, Inc. (File Nos. BR–1137 and BRH–1674) ARE GRANTED; and the application of Radio Greenwood, Inc. (File No. BR–2821) IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
ARTHUR A. GLADSTONE,
Chief Hearing Examiner.

F.C.C. 73R-76

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of CHARLES W. HOLT, TALLAHASSEE, FLA.	Docket No. 19445 File No. BP-18189
TALQUIN BROADCASTING CO., QUINCY, FLA.	Docket No. 19446 File No. BP-18464
B. F. J. TIMM, TALLAHASSEE, FLA. For Construction Permits	Docket No. 19447 File No. BP-18487

MEMORANDUM OPINION AND ORDER

(Adopted February 15, 1973; Released February 22, 1973)

BY THE REVIEW BOARD: BOARD MEMBER PINCOCK DISSENTING. BOARD MEMBER NELSON NOT PARTICIPATING.

1. Before the Review Board are two appeals from adverse rulings, filed November 27 and November 29, 1972, respectively, by B. F. J. Timm (Timm).[1] In the appeals, Timm seeks reversal of the Judge's denials of Timm's requests for permission to adduce evidence of the past broadcast record of competing applicant Charles W. Holt (Holt) in the operation of Station WHSY-FM, Hattiesburg, Mississippi,[2] and of Timm's past broadcast record in the operation of FM Station WGLF, Tallahassee, Florida.[3]

2. The Review Board will grant the appeal relating to WHSY-FM's unusually bad past broadcast record, but will deny the appeal relating to WGLF-FM's unusually good past broadcast record. Well established Commission policy requires that rulings of an Administrative Law Judge essentially interlocutory in nature not be reviewed by the Commission or the Review Board except when there is a manifest abuse of discretion or clearly unauthorized action. *Bay Broadcasting Co.*, 10 FCC 2d 331, 11 RR 2d 429 (1967); and *Image Radio, Inc.*, 13 FCC 2d 59, 13 RR 2d 205 (1968). Nevertheless, the Board is of

[1] Also before the Board are the following related pleadings: (a) oppositions, filed December 7 and December 11, 1972, by Holt; (b) Broadcast Bureau's comments, filed December 7, 1972; (c) replies, filed December 11 and December 14, 1972, by Timm; and (d) petition for late acceptance of appeals, filed December 11, 1972, by Timm. On November 9, 1972, the Presiding Judge granted Timm 20 days within which to file the instant and another pending appeal, due to time difficulties in obtaining transcripts. Although Commission Rule 1.301(c)(2) requires that such appeals be filed within five days after they are allowed, the Board will grant petitioner's request for late acceptance since the appeals were consistent with the agreement on the hearing record, no party objected at the time of the ruling, and no prejudice will result to any of the parties from acceptance of the appeals.

[2] Charles W. Holt, in addition to being an applicant in the present proceeding, is also president, general manager and 51% stockholder in Hub City Broadcasting Co., Inc., licensee of radio Stations WHSY-AM and FM, Hattiesburg, Mississippi.

[3] Timm, in addition to being an applicant in the present proceeding, is also president and 100% stockholder of Tallahassee Broadcasting Company, licensee of Station WGLF-FM, Tallahassee, Florida.

the view that Timm has clearly made the requisite threshold showing of "unusually poor" past broadcast record with regard to WHSY–FM,[4] and therefore the Judge's ruling must be overturned. Appellant relies on WHSY–FM's 1970 renewal application, which reveals that, in 83 composite weekly hours of operation, WHSY–FM devoted no time whatever to news, public affairs and "all other programs exclusive of entertainment and sports." Holt's only explanation for these percentages is his assertion that WHSY is part of an AM–FM operation and "efforts toward non-duplication had been in progress." However, precisely why efforts toward non-duplication should result in these percentages is unclear and the explanation does not, therefore, negate the inference that the zero percentages in the public service categories represent a deficiency in the station's obligation to meet the public's needs and interests.[5] As to Timm's own past broadcast record in the operation of WGLF–FM, however, the Board does not believe the Presiding Judge's ruling represents an abuse of discretion. Timm's showing does indicate the nature and diversity of its public affairs programming, but it also shows that only 45 minutes of WGLF's programming during the 1970–71 composite week was devoted to public affairs, or only 0.45% of the program time. Timm also concedes that WGLF has no news department whatever.[6] Under these circumstances, we do not regard the Judge's refusal to allow evidence of Timm's past broadcast record as an abuse of discretion, and, consequently, the Board will deny Timm's appeal.

3. Accordingly, IT IS ORDERED, That the petition for late acceptance of appeals, filed December 11, 1972, by B. F. J. Timm IS GRANTED, and the appeals ARE ACCEPTED; that the appeal from adverse ruling, filed November 27, 1972, by B. F. J. Timm IS GRANTED; and that the appeal from adverse ruling, filed November 29, 1972, by B. F. J. Timm IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[4] See *Policy Statement on Comparative Broadcast Hearings,* 1 FCC 2d 393, 5 RR 2d 1901 (1965).

[5] Holt also contends that the only method for introducing such evidence is by a petition to enlarge the issues and that, since its 1970 renewal application was granted, the matter need not be reopened. Both contentions are in error. The Board has expressly held that no special issue is required in order to adduce evidence on past broadcast record under the comparative issue. See *East St. Louis Broadcasting Co., Inc.,* 9 FCC 2d 212, 10 RR 2d 859 (1967); and *Pleasant Broadcasting Co.,* 19 FCC 2d 964, 17 RR 2d 465 (1969). And, since no comparative evaluation is involved in a grant of a renewal application, we do not regard the renewal of WHSY–FM's license as a bar to the comparative inquiry being authorized herein.

[6] Appellant cites *Mid-Florida Television Corp.,* 33 FCC 2d 1, 23 RR 2d 521 (1972), for the proposition that the Board does not find fault with an "otherwise superior record for the failure of a radio station to make news its thing." However, in *Mid-Florida* the Board indicated only that failure to specify in a renewal application what employees were engaged in news operations did not detract from an "unusually good' record. Moreover, the Board acknowledged that the station "must have employed someone in a news capacity." Thus, the Board believes *Mid-Florida* to be inapposite to the present proceeding.

F.C.C. 73-144

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of ITT WORLD COMMUNICATIONS INC. Petition Under Section 201(a) of the Communications Act of 1934 for Connection With RCA Global Communications, Inc. To Enable ITT To Provide Telex and Message Telegraph Services With Guam	Docket No. 19684

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 20, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. The Commission has before it:

a. A petition filed by ITT World Communications Inc. (ITTWC) on March 29, 1972, requesting that the Commission, pursuant to Section 201(a) of the Communications Act of 1934, direct RCA Global Communications, Inc. (RCAGC) to cooperate with ITTWC in (i) establishing an electrical interconnection between RCAGC's telegraph message and telex systems on Guam and ITTWC's telegraph message and telex systems, (ii) establishing through routes and charges applicable thereto and the division of such charges, and (iii) establishing and providing facilities and regulations for operating such through routes;

b. A petition, filed by RCAGC on May 10, 1972, to dismiss or deny the petition for interconnection; and

c. A reply, filed by ITTWC on May 31, 1972, to the petition to dismiss or deny.

2. Presently, RCAGC has exclusive authority to provide telex and telegraph message services at Guam. Prior to October 1964, RCAGC was the only carrier equipped and authorized to provide any communications services between Guam and overseas points. By Memorandum Opinion, Order and Certificate adopted October 21, 1964, FCC 64-943 (File No. T-C-1791), the Commission authorized ITTWC to provide at Guam leased circuits for alternate and simultaneous voice and non-voice use by defense agencies of the United States government and leased circuits for alternate voice-record use by other customers. We were unable, however, to find then that the public interest would be served by permitting an additional record

carrier to compete with RCAGC at Guam in providing telegraph message, telex, and leased channel telegraph services.

3. In July 1967, ITTWC again applied for authority to provide all types of record telegraph services at Guam.[1] By Memorandum Opinion and Order adopted February 25, 1970, 21 FCC 2d 589 (File No. T–C–1791–7), we found that, in view of then current conditions, the public interest would be served by amending former limitations on ITTWC (as well as on Western Union International, another international record carrier) to permit competition in leased telegraph channel services on Guam, but we were unable to make such a finding with respect to message telegraph and telex.

4. In its present petition, ITTWC alleges that, in view of RCAGC's refusal to a midpoint interconnection with ITTWC's telex services offered in the Continental United States, Hawaii, Puerto Rico and the Virgin Islands, its own telex subscribers are unable to directly communicate with those of RCAGC at Guam. ITTWC recognizes that its subscribers could communicate with Guam were they to subscribe to the RCAGC telex system or, with respect to the Mainland, the Western Union Telegraph Company's (WUT) Telex or TWX systems through which a connection with the RCAGC telex system could be made.

5. However, ITTWC asserts, it has about 2000 telex subscribers in New York City who do not also subscribe to the RCAGC system. Moreover, if they were to subscribe to WUT's domestic system they would be dependent on a less efficient routing than if they were able to reach Guam directly via ITTWC. ITTWC states that the situation is particularly acute at Hawaii where it has 213 exclusive telex subscribers who have no telex access to Guam. This is considered by ITTWC to be significant in view of Guam's growth and the expansion of Honolulu firms to Guam.

6. According to ITTWC, the inability of its customers to reach Guam has inhibited it in competing for new subscribers, is causing losses in existing subscribers, and may affect its ability to attract users of leased channel services with Guam. In addition, ITTWC points out, it is unable to compete for the transit handling of telex traffic between Guam and points other than the Mainland and Hawaii. Insofar as telegraph message traffic is concerned, ITTWC believes that the lack of interconnection with RCAGC at Guam has relegated it to the role of a domestic carrier, since it must exchange such messages with RCAGC for overseas transmission. ITTWC proposes that interconnection initially involve three 50-band circuits, one for message use and two for telex use.

7. ITTWC stresses that it does not seek to disturb the status quo or to establish new facilities and offer additional services on Guam. It is endeavoring to extend communications services that it offers in Hawaii, San Francisco, New York, Washington, D.C., Puerto Rico and the Virgin Islands to include telegraph message and telex to and from Guam and thus achieve an equal footing with RCAGC in competing to meet the communications needs on Guam. A normal partner-

[1] In 1965, the Telegraph Committee had denied a request of ITTWC to provide leased channel telegraph service at Guam. FCC 65 M–1484 (File No. T–C–1791, 1965).

ship arrangement (similar to the many both ITTWC and RCAGC have with foreign entities), where operations are on a direct circuit basis and where each entity provides channel facilities to the theoretical midpoint, would satisfy that objective.

8. In its opposition to the ITTWC petition, RCAGC argues that ITTWC has failed to demonstrate that there has been any significant change in circumstances since our former decisions in the matter. According to RCAGC, ITTWC has not shown that its proposal is economically feasible or that RCAGC's current telex and telegraph message operations at Guam are inadequate.

9. Regarding the inability of some ITTWC subscribers to reach Guam, RCAGC asserts that this fact was well known to the Commission at the time of its earlier decisions and presumably was taken into consideration. In addition, RCAGC argues that the loss of customers due to the limitation placed on ITTWC's operations is unlikely since only about 10% of telex customers do not also subscribe to the telex service of another carrier.

10. RCAGC concludes that the real objective of ITTWC in the instant petition is to divide the Telex business at Guam. Such a division, according to RCAGC, would render its Guam telex and telegraph message services, now operating at a loss, more unprofitable and ultimately degraded. While RCAGC agrees that there is evidence of an increase in telex traffic at Guam, it claims that its investments and costs in providing telex and telegraph message services have also risen.

Discussion

11. We think that the points raised by ITTWC have sufficient merit to warrant an investigation and shall therefore, pursuant to Section 201(a) of the Communications Act of 1934, order a hearing into the matter. While it is true that heretofore we have not been able to make a public interest finding enabling ITTWC to operate its telex and message services at Guam, the issue now before us is whether RCAGC, as the sole carrier authorized to provide such services at Guam, should interconnect with ITTWC telex and message services offered at other points rather than connecting only with its own telex and message services at such points and so maintain a virtual monopoly position with respect to transmission of telex traffic and message traffic between Guam and other United States points. There is nothing in our previous orders on the matter that furnishes a basis for concluding that we have already determined this latter point in RCAGC's favor. Our previous remarks with respect to feasibility of competition at Guam were directed to operations only at Guam, not to total operations between Guam and other points in RCAGC's system.

12. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 201(a) and 403 of the Communications Act of 1934, that an investigation is hereby instituted into establishing an interconnection between RCAGC's telegraph message and telex system on Guam and ITTWC's telegraph message and telex system.

13. IT IS FURTHER ORDERED, that without in any way limiting the scope of the proceeding, it shall include inquiry into the following matters:

(1) Whether it is necessary or desirable in the public interest to require RCAGC to interconnect its telegraph message and telex facilities with facilities of ITTWC for the provision of service to and from Guam:

(a) The effect, financial and other, on ITTWC and RCAGC telex and message services, and the public, were no interconnection to be established; and

(b) the manner in which ITTWC customers are able to send or receive messages to and from Guam in the absence of interconnection.

(2) The point at which interconnection, if any, should be established, and the financial and other effects on the ITTWC and RCAGC telex and message services and the public:

(a) The through routes and charges to be established;

(b) the facilities and regulations appropriate to the operation of such routes;

(c) the charges and the classifications, regulations, and practices affecting such charges; and

(d) the appropriate division of such charges.

14. IT IS FURTHER ORDERED, that a hearing shall be held in the proceeding at the Commission's offices at Washington, D.C. at a time to be specified in a subsequent order and that the Administrative Law Judge designated to preside at the hearing shall certify the record to the Commission without preparing either a recommended or initial decision and that the Chief, Common Carrier Bureau shall prepare and issue a recommended decision which shall be subject to the submittal of exceptions and request for oral argument as provided in 47 C. F. R. Section 1.276 and 1.277, after which the Commission shall issue its decision as provided in 47 C. F. R., Section 1.282.

15. IT IS FURTHER ORDERED, that ITTWC and RCAGC are hereby made parties respondent to the proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-165

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of MEREDITH COLON JOHNSTON (WECP), CARTHAGE, MISS.	Docket No. 18487 File No. BP-17449
AARON L. FORD AND GERTRUDE C. FORD, D.B.A. FORD BROADCASTING CO., JACKSON, MISS.	Docket No. 18488 File No. BP-17752
For Construction Permits	

APPEARANCES

Russell Rowell (Fletcher, Heald, Rowell, Kenehan, and Hildreth) on behalf of Ford Broadcasting Company; *Robert A. Woods* (Schwartz and Woods) on behalf of Meredith Colon Johnston (WECP); and *William D. Silva* on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted February 14, 1973; Released February 21, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON NOT PARTICIPATING; COMMISSIONER REID ABSENT.

1. This case involves the mutually exclusive applications of Meredith Colon Johnston (Johnston) and of Aaron L. Ford and Gertrude C. Ford, d/b as the Ford Broadcasting Company (Ford). Johnston seeks a construction permit to change the existing facilities of standard broadcast station WECP, Carthage, Mississippi, from 1480 kHz, 500 watts, Day to 1080 kHz, 250 watts, Day, Class II-D; while Ford has applied for a construction permit for a new Class II-D standard broadcast station on 1080 kHz, 10 kw, DA-Day at Jackson, Mississippi. Following hearings the Administrative Law Judge granted Johnston's application and denied that of Ford. 33 FCC 2d 345 (1970). The Review Board affirmed this decision. For a complete history of the proceeding as well as a recitation of the issues in the case, see the Review Board's Decision at 33 FCC 2d 324 (1972).

2. Following Ford's filing of an application for review of the Review Board's Decision, we granted review and ordered oral argument in the proceeding to be held on January 22, 1973. FCC 72-1119, released December 18, 1972. We have carefully considered the record evidence in this proceeding, as well as the pleadings submitted to the Commission and counsels' contentions advanced at oral argument. This has been a strenuously contested proceeding, and the record is replete with conflicting evidence on each of the contested issues. How-

ever, both the Administrative Law Judge and the Review Board determined that a grant of Johnston's application would better serve the public interest. On the basis of our review of this case, we are persuaded that the Review Board's findings adequately and properly reflect the record and that its conclusions and ultimate disposition of the applications under consideration are correct. For the reasons set forth in the Board's decision, which we adopt as our own, we shall therefore grant the application of Johnston and deny that of Ford.

3. Accordingly, IT IS ORDERED, That the Decision of the Review Board, 33 FCC 2d 324, IS AFFIRMED; that the application of Meredith Colon Johnston (WECP) for a construction permit to change the existing facilities of standard broadcast station WECP, Carthage, Mississippi, from 1480 kHz, 500 watts, Day, to 1080 kHz, 250 watts, Day, Class II–D, IS GRANTED; and that the application of Aaron L. Ford and Gertrude C. Ford, d/b as Ford Broadcasting Company for a construction permit for a new standard broadcast station on 1080 kHz, DA–Day, Class II–D, Jackson, Mississippi, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–190

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re: LVO CABLE, INC., PRYOR, OKLA. For Certificate of Compliance	CAC–1058 OK078

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 22, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONER H. REX LEE CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. On August 23, 1972, LVO Cable, Inc., filed an application (CAC–1058) for certificate of compliance for a new cable television system to serve approximately 7,036 persons at Pryor, Oklahoma (outside all television markets).[1] The application proposes carriage of the following television signals: KFSA–TV (ABC, CBS, NBC) and KFPW–TV (Ind.), both Fort Smith, Arkansas; KGTO–TV (NBC), Fayetteville, Arkansas; KODE–TV (ABC) and KUHI–TV (CBS) both Joplin, Missouri; and KOAM–TV (NBC), Pittsburg, Kansas. This application is opposed by Leake TV, Inc., licensee of Station KTUL–TV, Tulsa, Oklahoma, and LVO has replied.

2. In its objection, Leake alleges: (a) that LVO's proposal to carry the six television signals requested on a composite basis (in the event the system does not have adequate channel capacity to carry all the stations full-time) is not permitted by Section 76.55(b):[2] (b) that composite carriage is inconsistent with the public interest because: (1) individual station identities may not be maintained; (2) there is no assurance that station and sponsorship identification information would be provided or that the system would not insert its own ads; (3) there is no assurance that fairness and political broadcasting balances maintained by individual stations would be maintained on the cable channels used for composite programming; and (4) there is no indication how the public is to be protected against biased presentations or misrepresentations; (c) that composite carriage may involve copyright infringement because program selection is more akin to program origination than the passive transmission of broadcast signals; (d) that

[1] On September 1, 1972, LVO Cable, Inc., under the name Gencoe, Inc., received a certificate of compliance for carriage of KTUL–TV (ABC), KTEW (NBC), KOTV (CBS), KOED–TV (Educ.), all Tulsa, Oklahoma; KTVT (Ind.), Fort Worth, Texas; KDTV (Ind.), Dallas, Texas; and KBMA–TV (Ind.), Kansas City, Missouri on its cable television system at Pryor, Oklahoma, until March 31, 1977.

[2] Section 76.55(b) of the Rules provides that:

"(b) Where a television broadcast signal is carried by a cable television system, pursuant to the rules in this subpart, the programs broadcast shall be carried in full, without deletion or alteration of any portion except as required by this part."

composite programming on a "Super TV Station or Stations" will create an unfair competitive advantage against the local Tulsa stations whose service areas include Pryor; and (e) that LVO's franchise is not in compliance with Section 76.31 of the Rules.

3. We rule on the objections as follows: (a) Broadcast TV signals that are required on request to be carried must be carried full time. But, where a cable system is located outside all television markets, our rules do not prohibit composite carriage of distant television signals. Section 76.55(b) specifically provides that where a television broadcast signal is carried, the programs broadcast shall be carried in full without deletion or alteration of any portion except as required. But this refers only to carriage of particular programs;[3] (b) (d) Leake has not supported these allegations, and we will reject the arguments as speculative; (c) we do not find this argument persuasive; moreover, this is not the forum in which a copyright argument is relevant; and (e) when the Pryor system was authorized, its franchise (granted February 17, 1970) was found to be in substantial compliance sufficient to warrant a grant until March 31, 1977. E.g. *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection to Certification" filed October 16, 1972, by Leake TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That LVO Cable, Inc.'s "Application For Certification" (CAC–1058) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[3] We note that Station KTUL–TV, which places a Grade A contour over Pryor, has the rights of mandatory carriage, upon request, and network program exclusivity, upon request, under Sections 76.57(a)(1) and 76.91 of the Commission's Rules, respectively.

F.C.C. 73R-87

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of MEDIA, INC., YOUNGSTOWN, OHIO	Docket No. 18768 File No. BP-17435
JUD, INC., ELLWOOD CITY, PA. For Construction Permits	Docket No. 18769 File No. BP-17749

ORDER

(Adopted February 23, 1973; Released February 27, 1973)

BY THE REVIEW BOARD: NELSON, PINCOCK, AND KESSLER.

1. The Review Board having under consideration the petition for leave to amend to update application pursuant to Section 1.65 of the Rules, filed February 5, 1973, by Jud, Incorporated;

2. IT APPEARING, That no objections to acceptance of the amendments have been filed within the time allowed therefor;

3. IT IS ORDERED, That the above petition for leave to amend IS GRANTED and the amendment therein IS ACCEPTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-80

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of OLYMPIAN BROADCASTING CORP. (WKIP), POUGHKEEPSIE, N.Y. For Construction Permit	Docket No. 19171 File No. BP-18122

APPEARANCES

Reed Miller, *Jerome Lipper* and *David H. Lloyd*, on behalf of Olympian Broadcasting Corp.; *Michael Finkelstein* and *Martin A. Blumenthal*, on behalf of WNAB, Inc.; *Louis Schwartz*, on behalf of Raritan Valley Broadcasting Company, Inc.; *Donald E. Bilger* and *Robert L. Olender*, on behalf of Masscom Broadcasting Corporation; and *Earl C. Walck*, *Katherine Savers McGovern* and *Robert B. Nelson*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted February 20, 1973; Released February 23, 1973)

BY THE REVIEW BOARD: BERKEMEYER, PINCOCK, AND KESSLER.

1. Olympian Broadcasting Corp. (WKIP), the applicant herein, seeks to modify its existing Class IV standard broadcast facility at Poughkeepsie, New York. WKIP now operates on 1450 kHz, 250 w, 1 kw-LS, DA-D, U, with a two-tower antenna system. The No. 1 tower is a 340 foot top-loaded tower now utilized with power of 250 watts and an effective radiated field of 270 mv/m, for WKIP's nighttime nondirectional operation. The No. 2 tower is a 160 foot guyed unit utilized only during daytime hours, in conjunction with its 340 foot top-loaded tower, to develop the required daytime directional radiation pattern, using 1 kw power. The present daytime antenna radiation is 275 mv/m to the north, 190 mv/m to the east, 75 mv/m to the south (from 140° to 210° True including directions toward cochannel Stations WNAB, Bridgeport, Connecticut, and WCTC, New Brunswick, New Jersey), 210 mv/m west, with 250 mv/m in the direction of WMAS, Springfield, Massachusetts. These antenna radiations produce an RMS field of 200 mv/m for 1,000 watts.

2. By its request for modification here, WKIP proposes (a) to dismantle its second tower which now provides for daytime directional operations, and (b) to operate nondirectionally daytime utilizing its 340 foot top-loaded tower, with its effective radiated field of 270 mv/m. In essence, therefore, the applicant here is seeking an improvement of WKIP's facilities whereby its daytime antenna efficiency is sub-

stantially improved, particularly in the southern direction where its effective radiated field is now 75 mv/m.[1]

3. By Memorandum Opinion and Order, FCC 71-24, released March 23, 1971, the Commission designated this application for hearing after reviewing the substance of the allegations of a petition to deny, filed by WNAB, Bridgeport, and the opposition and reply pleadings thereto. In its designation Order, the Commission also reviewed pertinent aspects of the historical background of WKIP's operation as well as WNAB's, and the interaction of their respective operations from an engineering standpoint. In this connection, the Commission noted that (a) WKIP's requested effective field of 270 mv/m/kw was in excess of the 150 mv/m/kw radiated by Station WKIP in late 1962 when it last operated with 250 watts daytime, and (b) in addition to changing from directional to nondirectional daytime, the applicant was simultaneously requesting an increase in effective field beyond that allowed under existing policy when a Class IV station increases daytime power. Accordingly, the Commission designated the application for hearing on three issues relating (a) to the areas and populations proposed to be gained, (b) to the extent of interference caused to three existing co-channel stations, and to the availability of other primary services, and (c) to the ultimate question of whether, in the light of the evidence adduced, a grant would serve the public interest.

4. Following the hearing on December 16, 1971, Administrative Law Judge Isadore A. Honig issued an Initial Decision [2] recommending a denial of WKIP's application. In reaching his conclusion, the Presiding Judge outlined part of the historical background relating to WKIP's operation, in para. 9 of his findings of fact, as well as para. 9 of his conclusions. The crux of his decision is set forth in para. 11 of the conclusions of the Initial Decision, and reads in pertinent part, as follows:

> The issues specified in this proceeding require a determination relative to the gain or loss of WKIP primary service as well as to the impact of the proposed operation on the operations of three existing stations. The long-established decisional test applied by the Commission to the facts ascertained under these issues where there is resulting objectionable interference is "whether the need for the proposed service outweighs the need for the service which will be lost by reason of such interference." The findings of fact show that the applicant's rural gain area receives from 17 to 27 aural services and that the urban gain area receives from 12 to 14. Two Poughkeepsie FM stations serve all of the gain area, both rural and urban portions, and AM station WEOK in Poughkeepsie serves at least 75% of the gain area, both rural and urban portions. Thus, the population in the gain area, approximately 73% of whom reside in Duchess County, now enjoy an abundance of radio service which includes FM service from 2 Poughkeepsie stations and AM service in at least 75% of the gain area from a Poughkeepsie station. Similarly, the populations in the areas of objectionable interference that would be suffered by Stations WMAS, WCTC and WNAB all receive a plentitude of service since at least 10, 12 and 15 AM services are available to them, respectively.

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[1] See the chronology set forth in the attached appendix relating to our ruling on WKIP's exception No. 1, and to WKIP's original 1968 application seeking to modify the daytime directional antenna in a manner which would particularly increase the effective radiated field in the southern direction from 75 mv/m to 150 mv/m. Subsequently, as shown by the chronology, this application was amended to the instant proposal eliminating the daytime directional antenna which results in an antenna efficiency increase to 270 mv/m/kw.

[2] FCC 72D-21, issued March 22, 1972, and released March 23, 1972.

Based upon consideration of the number of services available to the proposed WKIP gain area and to the areas which would lose service, it is concluded that *the applicant has not made a persuasive showing of a preponderating need for service to such gain area.* (Emphasis supplied.)

5. Exceptions were filed by WKIP, challenging the Presiding Judge's interpretation and construction of the Commission's recitations in its designation Order, as well as his interpretation and construction of the Commission's Class IV power policy, and the ultimate resolution of the overall public interest issue. WKIP urges the Board (a) to reverse the Presiding Judge's rulings excluding from evidence portions of WKIP's exhibits which set forth the historical prior nexus of WKIP and WNAB, and of other co-channel stations, and (b) to grant the subject application.

6. Oral argument was held on January 23, 1973. We have reviewed the Initial Decision in light of WKIP's exceptions and oral argument, and our examination of the record. Except as modified in the rulings on exceptions in the attached appendix, we concur with the Presiding Judge's findings of fact and conclusions, and hereby adopt the Initial Decision. In this connection, it is to be noted, as shown by our ruling on WKIP's exception No. 1, that we have modified the Presiding Judge's findings of fact at para. 9 of his Initial Decision by additional findings to reflect the chronology of prior events relating to WKIP and WNAB. However, we cannot accord decisive weight to these additional findings. On the basis of the issues in this proceeding and the Commissison's present policy which requires that proposals to increase antenna efficiency stand or fall on their own merits where objectionable interference to existing stations will result, it is our view that (a) this case must be decided on the basis of present policy; (b) WKIP, although accorded an opportunity in this proceeding to meet the preponderant need test,[3] failed to do so; and (c) under these circumstances, the WKIP application must be denied. Moreover, we deem WKIP's representations relating to its 1963 amendment to change to a directional daytime operation to supersede all prior representations and proposals. For it is clear that, on the basis of WKIP's 1963 engineering statements, representations were made that the public interest would be served by a grant of the amended directional daytime proposal because (a) WKIP would be able to provide adequate *nighttime* coverage of its principal city *for the first time;* (b) the daytime directional would provide adequate protection to WKIP against the increased daytime interference resulting from recent grants of power increases to co-channel Stations WNAB, WMAS, and WCTC; and (c) the proposed directional daytime operation would result in a *reduction* of interference to two stations (WMAS and WNAB), and the *elimination* of interference to a third (WCTC), when compared with the WKIP 1 kw nondirectional operation authorized by the Commission in 1962. The Commission did, in fact, grant the daytime directional application on September 15, 1965. In doing so, it may reasonably be stated that the Commission relied upon these representations.

[3] See para. 4, *supra.*

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7. Stated another way, it is our view, on the basis of WKIP's antecedent history which we have considered in light of its exceptions, that this history lends no support whatsoever to its position here that in 1963, when the Commission set aside the 1962 grant, in view of the Court of Appeal's decision in *Hudson Valley Broadcasting Corporation* v. *F.C.C.*, 320 F.2d 723 (D.C. Cir. 1963), the station was then "forced" to go directional. This simply is not so based upon the historical chronology set forth in our rulings on exception no. 1 in the attached appendix. The chronology shows that in 1963 when the Commission set aside the 1962 grant and designated the application for hearing, the Commission required WKIP to reduce only its antenna efficiency to 150 mv/m/kw pending the outcome of the hearing. In all other respects, the Commission's interim authorization, pending the outcome of the hearing, permitted WKIP to retain the substantial benefits of its 1962 grant, *viz*, continued operation at its new site, with its 340 foot top-loaded antenna, and with increased power of 1 kw. Hence, it is clear that at the particular moment in time in 1963 when WKIP amended its application, it retained substantial benefits from the 1962 grant. At that time, it also had the choice of proceeding to hearing on the issues specified which were not limited solely to the multiple ownership issue. Perhaps, it could have succeeded if it had continued to prosecute its 1962 application; instead, it chose to amend to provide for its present daytime directional operation on the basis of the public interest benefits already described at para. 6 above. It is also patently clear that with its present daytime directional, it has, similarly, retained substantial benefits of the 1962 grant. See para. 1, *supra*.

8. In sum, as shown by para. 6 above, one of the public interest benefits to be derived from its present daytime directional operation was the reduction of interference to several stations, including WNAB. Now, due to the acquisition of WKIP by new owners thereby eliminating the prior multiple ownership problem of the former owners with WGNY, Newburgh, New York, the new owners desire to obliterate this public interest benefit—without meeting the preponderant need test prescribed by the issues in this proceeding [4]—and on the basis of a contention that they, in effect, have a right to a return of the *status quo ante* of the 1962 grant. We disagree. Succinctly stated, we believe that (a) the new owners are bound by prior representations made with respect to the WKIP directional daytime proposal because it is undebatable that the new owners are charged with notice and knowledge of WKIP's antecedent history; and (b) it was incumbent upon them to meet the preponderant need test [5] in order to prevail in this proceeding.

9. Accordingly, IT IS ORDERED, That the application of Olympian Broadcasting Corp. (WKIP) (File No. BP-18122) for a construction permit to change its daytime operation to a non-directional operation and to increase its effective daytime antenna radiation to 270 mv/m, IS DENIED.

SYLVIA D. KESSLER,
Member, Review Board,
Federal Communications Commission.

[4] See para. 4, *supra*.
[5] See para. 4, *supra*.

APPENDIX

RULINGS ON EXCEPTIONS OF OLYMPIAN BROADCASTING CORP. (WKIP) TO EVIDENTIARY RULINGS

Exception No.	*Rulings*
1	Granted, to the extent that these exhibits (consisting of reproductions of construction permits, licenses and engineering statements in support of applications therefor for Class IV Stations WNAB, WCTC, WMAS and WKIP) are relevant to an understanding of the historical background in this proceeding. For this purpose, we have also taken official notice of the unreported Initial Decision of Administrative Law Judge Millard F. French (FCC 58D–40), released June 10, 1958, granting the application of WNAB for a construction permit to change its facilities, by moving the transmitter-antenna location, increasing the overall height to 344 feet, and increasing the antenna efficiency to 237 mv/m/kw. In the context of para. 9 of the findings of fact of the Initial Decision, these are additional findings relating to the chronology of events: 1958—WKIP and WNAB entered into an agreement in which they agreed to mutually accept increases in their respective antenna efficiencies. WKIP Exh. 5, p. 28. 1959—License was issued to cover WNAB CP grant. 1961—WKIP and WNAB entered into a further agreement in which they mutually agreed to power increases of 1 kw daytime. WKIP Exh. 5, p. 28. 1961—WKIP filed an application for a construction permit to improve its facilities by moving its transmitter site, increasing its antenna height by using a 340 foot top-loaded antenna, increasing its antenna efficiency to 270 mv/m, and increasing its daytime power from 250 watts to 1 kw. 1961—WNAB filed an application for increase of power daytime from 250 watts to 1 kw which was granted September 5, 1962. 1962—The Commission denied a petition to deny, filed by WEOK, Poughkeepsie, directed against a grant of the WKIP application on the grounds that its service area involved increased overlap with the service area of WGNY, Newburgh, New York, in contravention of the Commission's multiple ownership rule, and granted WKIP's application, without hearing, 24 RR 223 (1962), WKIP Exh. 6. At the same time, the Commission concurrently granted the WNAB application. 1963—Upon review of the WKIP grant, without hearing, the Court of Appeals in *Hudson Valley Broadcasting Corporation* v. *F.C.C.*, 320 F.2d 723 (1963), remanded the case to the Commission for further proceedings. WKIP Exh. 7. 1963—By Memorandum Opinion and Order, released July 23, 1963 (WKIP Exh. 5, p. 31), the Commission set aside its prior grant of WKIP's application, designated it for hearing, and authorized an interim operation during the pendency of the hearing which permitted WKIP to remain at its new site, with power of 250 w, 1 kw–LS, unlimited time, but with the antenna

Exception No.	*Rulings*
	radiation not to exceed 150 mv/m/kw. In this connection, the Commission stated: "If WKIP were required to operate with only 250 watts power during daytime hours, it would receive serious interference from co-channel Class IV stations that have recently increased daytime power. However, operation at reduced antenna efficiency, but with the increased power will permit WKIP to continue to serve essentially all the population served prior to the Class IV power increases. Accordingly, the Commission will permit continued operation of WKIP at the new site, but with the antenna efficiency not to exceed 150 mv/m/kw."
	1963—On September 6, 1963, WKIP filed an amendment to its 1962 application proposing a change in the daytime mode of operation to include a directional antenna system and the addition of a second tower. WKIP Exh. 5, pps. 35–49. In this connection, the engineering statement accompanying the amendment reads, in pertinent part, as follows: "WKIP has complied with the [Commission's] order to reduce efficiency by inserting a suitable resistor in series with the antenna. As a result of this interim authority, *WKIP is once again unable, during nighttime hours, to render primary service to all of the area within its principal city.* It is now proposed to reduce the WKIP signal in the direction of WGNY during daytime hours to the equivalent of the WKIP coverage from the former 250 watt roof top operation and thereby eliminate any increase in overlap of coverage between the two stations. * * * During daytime hours, WKIP would operate with a two tower directional system to restrict signal toward WGNY. * * * The proposed daytime directional system, while not providing the optimum coverage gains available from the originally proposed 1000 watt nondirectional operation authorized in September 1962, will, nevertheless, provide adequate protection to WKIP against the increased daytime interference resulting from recent grants. * * * At the same time, WKIP will be enabled to improve its overall service in the Poughkeepsie area, both day and night and, *for the first time, to provide adequate night coverage of its principal city.* * * * The proposed directional daytime operation would not cause any new interference. * * * It would result in a *reduction* of interference to two stations (WMAS and WNAB) and the *elimination* of interference to a third (WCTC), when compared with the WKIP 1 kw. nondirectional operation authorized by the Commission in September 1962." (Emphasis supplied.) See WKIP Exh. 5, pps. 36–38.
	1963—By Memorandum Opinion and Order, released September 23, 1963, the Administrative Law Judge accepted the amendment, removed the application, as amended, from hearing, returned it to the processing line, and terminated the hearing. WKIP Exh. 5, p. 50.

Exception No.	*Rulings*
	1965—On September 15, 1965, the Commission granted the WKIP application for a daytime directional operation, using 1 kw power, and for nondirectional nighttime operation, using 250 watts power, and an antenna efficiency of 270 mv/m.
	1967 [1]—Star Broadcasting Corporation acquired the license of WKIP, pursuant to Commission consent (File No. BAL–6196) on December 22, 1967.
	1968—On March 8, 1968, Star Broadcasting Corp. filed an application to modify WKIP's daytime directional operation, in a manner which would particularly increase the effective radiation field in the southern direction from 75 mv/m to 150 mv/m.
	1969—WNAB filed a petition to deny the Star 1968 application.
	1969—Star filed an amendment to its application to modify its daytime facilities, stating that since the question of duopoly overlap no longer obtains, Star, by the instant amendment, proposes to resume nondirectional daytime operation with power of 1 kw, as originally authorized by the Commission on September 5, 1962. This is the proposal involved in the subject proceeding.
	1969—WNAB filed a supplement to its petition to deny.
	1970—By Commission consent (File No. BTC–6253; BAL–7130). Olympian Broadcasting Corp. acquired the license of WKIP from Star Broadcasting Corp., effective November 5, 1970.
	1970—Star's application amended in order to reflect the assignment of the license of WKIP to Olympian.
	1971—By Memorandum Opinion and Order (FCC 71–248), released March 23, 1971, the Commission designated the 1968 application, as amended, for hearing.
2	Granted. The availability of services in the interference area under common ownership with WNAB is relevant to a determination of the significance of the interference.
3	Denied, since no party to this proceeding requested the addition of an issue regarding specialized local programming. *WMAX, Inc.*, 29 FCC 706, 19 RR 1086a (1960), *reconsideration denied*, 30 FCC 104, 19 RR 1091 (1961); *Mid-America Broadcasting System, Inc.*, 19 RR 889 (1960); *Eastside Broadcasting Co.*, 37 FCC 625, 3 RR 2d 505 (1964).
	OLYMPIAN'S EXCEPTIONS TO FINDINGS
4	Granted, to the extent indicated in paras. 1 and 2 of the Board's decision. *Denied* in other respects because the requested finding obscures the facts.
5	Granted, see ruling on exception no. 1. *supra*.
6, 7	Denied, as irrelevant to the issues and the ultimate determination to be made. Exception requests a finding that would only be pertinent to a Class IV power increase, whereas the application here is for an in-

[1] The Board has officially noticed the filings which followed the 1965 directional authorization.

Exception No.	*Rulings*
	crease in antenna efficiency. See ruling on exception no. 10, *infra*. (NOTE: Even if granted, these exceptions would be of little significance in view of the finding of minimal interference to WCTC and WMAS in paras. 6 and 7 of the conclusions in the Initial Decision. In addition, if the same 250 watt test requested by exceptor, Olympian, were applied to WNAB, which Olympian does not urge, WKIP would cause objectionable interference. See Rules 73.37(c) and 73.24 (b)(2).)
	OLYMPIAN'S EXCEPTIONS TO CONCLUSIONS
8	Denied. See rulings on exception Nos. 6 and 7, ***supra***.
9	Denied. The elimination of the use of one tower not only results in an omnidirectional mode of daytime operation, but also results in an improved antenna efficiency toward those areas currently protected by the directional array. See paras. 1 and 2 of the Board's decision.
10	Denied. First, the instant proposal is not an application for a Class IV station power increase. It is an application to change the antenna system from a directional to a nondirectional array the effect of which is to increase the antenna efficiency in pertinent directions. See paras. 1 and 2 of the Board's decision. In both *Radio Station KAYE*, 37 FCC 242 (Rev. Bd. 1964), and *Moberly Broadcasting Co. (KWIX)*, 37 FCC 1049 (Rev. Bd. 1964), which involved applications for increase in antenna height of existing Class IV stations, the Commission found that the Class IV power increase policy was not pertinent. Rather, such applications "must stand or fall on their own merits under the presently applicable rules and policies * * *"
11	Denied. The Presiding Judge's conclusion is clearly supported by findings of the abundance of available services to the interference areas, the substantial loss of service to WNAB, and the failure of the applicant to seek enlargement of issues to include a determination of special need for the applicant's service which thereby precluded such a showing.
12	Denied for the same reasons given in the ruling to exception No. 11.
13	Denied. The exception is not supported by the record. See ruling on exception No. 1, which establishes that WNAB was authorized to improve its antenna efficiency in 1958.
14	Denied. The exception brushes over a distinction that must be made. The Commission does not have a policy favoring improvements in antenna efficiency of Class IV stations on a uniform basis; its policy supports uniform increases in power for that class. Further, the Commission has determined that "in the absence of a showing that objectionable interference would not result, the normal benefits which would accrue from power increases to 1 kilowatt would not be achieved unless the power increases were accomplished *without* any increase in antenna efficiency." (Emphasis supplied.) *Olympian Broadcasting Corp. (WKIP)*, 28 FCC 2d 399, 401 n.6 (1971). See *Moberly Broadcasting Co. (KWIX)*, 37 FCC 1049, 1053 (Rev. Bd. 1964). Also, see ruling on exception No. 10.

Exception No.	*Rulings*
15	Granted in part, *denied* in part. Improvements in antenna efficiency must stand or fall on their own merits. Where interference is involved, as here by WKIP causing objectionable interference to WNAB, Commission policy and rules require such proposal to meet the preponderant need test, as considered by the Presiding Judge in paras. 11–13 of his Initial Decision. Also, see our ruling on exception No. 14 and the cases cited therein.
16	Denied. See ruling on exception Nos. 10 and 14. The Board fully agrees with the Presiding Judge's determination that *North Shore Broadcasting Corp.* (*WESX*), 8 FCC 2d 741 (1967) and *North Shore Broadcasting Corp.* (*WESX*), 12 FCC 2d 687, 12 RR 2d 1256 (1968), are inapposite, and agrees with the reasons stated therefor.
17	Denied. The Presiding Judge's conclusion that a grant would not be in the public interest is clearly supported by Olympian's failure to meet the test under Rule 73.24(b)(2) and by its failure to establish that Commission regulations, policy or precedent justify a grant.
18	Denied, for the reasons stated in the Initial Decision, the Board's decision, and our rulings on WKIP's exceptions here.

F.C.C. 72D-21

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of OLYMPIAN BROADCASTING CORP. (WKIP), POUGHKEEPSIE, N.Y. For Construction Permit	Docket No. 19171 File No. BP-18122

APPEARANCES

Jerome Lipper and *David H. Lloyd*, on behalf of Olympian Broadcasting Corp.; *Michael Finkelstein* and *Martin A. Blumenthal*, on behalf of WNAB, Inc.; *Louis Schwartz*, on behalf of Raritan Valley Broadcasting Company, Inc.; *Donald E. Bilger* and *Robert L. Olender*, on behalf of Masscom Broadcasting Corporation; and *Earl C. Walck* and *Katherine Savers McGovern*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ISADORE A. HONIG

(Issued March 22, 1972; Released March 23, 1972)

PRELIMINARY STATEMENT

1. This proceeding involves the application of Olympian Broadcasting Corp. (Olympian), for a construction permit to change the daytime mode of operation of Station WKIP, Poughkeepsie, New York, from directional to nondirectional. The station is now authorized to operate on 1450 kHz, 250 w, 1 Kw, LS, DA-D, U.

2. By Commission's Memorandum Opinion and Order (FCC 71-248), released March 23, 1971, the application of Olympian was designated for hearing. In its designation order the Commission stated:

> The amendment to the Commission's rules to permit, with certain restrictions, Class IV stations to increase daytime power to 1 Kw was based on the assumption that the power increases would be on a uniform basis. As a result, no population receiving service from a Class IV facility would be deprived of such service, and, in addition, the signal strength of the Class IV service area would be improved due to the higher intensity of the signal. Obviously, however, if some Class IV stations are permitted to install new antenna systems with greatly increased efficiency, in addition to being authorized a power increase, a uniform power increase basis cannot be achieved. From data on file, it is clear that the proposed WKIP daytime omnidirectional operation, utilizing the highly efficient radiator, will result in an increase in overlap to the co-channel Class IV operation of WNAB in excess of that caused by either the present 1 Kw daytime directional operation or by omnidirectional operation with 1 Kw utilizing the originally authorized WKIP antenna system which radiated 150 mv/m/kw. Moreover, on the basis of the information on file, it has not been established that

the proposed operation of WKIP would not cause objectionable interference within the service areas of WCTC, New Brunswick, New Jersey, and WMAS, Springfield, Massachusetts. Therefore, it would be inappropriate to take final action on the WKIP application without fully considering the impact of the proposed operation on these stations as well. Accordingly, the Commission will, on its own motion, also name the licensees of Stations WCTC and WMAS parties to the proceeding.

3. The issues specified for the hearing are as follows:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of station WKIP and the availability of other primary aural (1 mv/m or greater in the case of FM) service to such areas and populations.

2. To determine whether the proposal of WKIP would cause objectionable interference to stations WNAB, Bridgeport, Connecticut; WCTC, New Brunswick, New Jersey; WMAS, Springfield, Massachusetts; or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience and necessity.

Except as indicated by the above-stated issues, the applicant was found qualified to construct and operate as proposed.

4. In the designation order the following were named parties to the proceeding: WNAB, Inc., licensee of Station WNAB, Bridgeport, Connecticut; Raritan Valley Broadcasting Company, Inc., licensee of Station WCTC, New Brunswick, New Jersey; and Masscom Broadcasting Corporation, licensee of Station WMAS, Springfield, Massachusetts.

5. The Commission directed that, in the event of a grant, the construction permit should contain the conditions specified in Paragraph 11 of the designation order.

6. A prehearing conference was held on April 26, 1971. During the conference, the Examiner ruled that the burden of proceeding with the introduction of evidence and of proof on all issues was upon Olympian. Hearing was convened on December 16, 1971,[1] with the record being closed on the same date.[2] Proposed findings of fact and conclusions were filed by Olympian, WNAB, Inc., and by the Broadcast Bureau on March 1, 1972. Replies were filed by WNAB, Inc. on March 14 and by Olympian on March 15, 1972.

[1] As a result of schedule conflicts and delays in obtaining 1970 population data, the hearing and other procedural dates were postponed.

[2] Masscom Broadcasting Corporation (WMAS), and Raritan Valley Broadcasting Company, Inc. (WCTC), did not participate in the hearing although they were represented at the prehearing conference.

Findings of Fact

THE PROPOSAL

7. Olympian Broadcasting Corp. proposes to modify the daytime operation of Station WKIP at Poughkeepsie, New York and to continue the present nighttime operation. Station WKIP now operates as a Class IV station on 1450 kHz with one kilowatt power daytime and 250 watts at night, unlimited time, employing a two-element directional antenna daytime. Under the proposal, it would change to nondirectional operation daytime with a 340 ft. top-loaded tower radiating an effective field of 270 mv/m/kw.

8. The applicant submits that, under the proposed operation, WKIP will again be using the same omnidirectional antenna system during daytime hours for which it held authorization during a period of about eleven months in 1962 and 1963 and with which it actually operated from January 24, 1963 to August, 1963 (WKIP Ex. 9, pp. 4, 10, 12, 22, 24, 26). This contention is borne out by the history of Station WKIP, revealed by Commission records and discussed below.

9. The Commission's license files show that, prior to late 1962, Station WKIP was authorized to operate with 250 watts power, unlimited time, utilizing a rooftop antenna having an antenna efficiency of 150 mv/m/kw. On September 5, 1962, it was granted a construction permit to operate at a new transmitter site with 1 kilowatt power daytime and 250 watts at night utilizing the 340 ft. top-loaded antenna proposed herein with an antenna efficiency of 270 mv/m/kw. The station operated with this facility from January 24, 1963 to August 13, 1963. On August 14, 1963, by inserting a resistor in the antenna system, Station WKIP reduced the daytime antenna efficiency to 150 mv/m/kw in accordance with Commission instructions because of a remand from the Court of Appeals relative to possible violation of the multiple ownership rules. It operated with 150 mv/m radiation from the tall tower under interim authority for a period of two years and seven months (August 14, 1963 to March 14, 1966). A construction permit to operate with a directional antenna daytime was granted on September 15, 1965, program tests were authorized on March 14, 1966, and a license was issued on May 23, 1966 and is still in effect (See Commission's files; order of designation; WKIP Ex. 9, pp. 4, 12, 22, 24, 26; Ex. 10, p. 1; Tr. 96, 97).

COMMUNITY OF THE APPLICANT

10. Poughkeepsie, New York has a population of 32,029.[3] It is the County Seat of Dutchess County (pop. 222,295), and is situated on the Hudson River some 60 miles north of downtown Manhattan (WKIP Ex. 9, pp. 14, 33). It is not a part of any urbanized or standard metropolitan statistical area. In addition to Station WKIP, Poughkeepsie has one other standard broadcast station, WEOK (1390 kHz, 5 Kw, DA-D, III) two FM stations, WEOK-FM (101.5 MHz,

[3] Population figures herein are based on 1970 U.S. Census data.

4.7 Kw, 830 ft., B) and WSPK (104.7 MHz, 5 Kw, 1250 ft., B), and no TV stations.

COVERAGE

11. To project contours, measured data from the 1966 WKIP proof-of-performance were used for the present directionalized operation, and an effective field of 270 mv/m in conjunction with the measured ground conductivity values was used for the proposed non-directional operation. Distances to the present and proposed daytime interference-free contours and corresponding effective fields in the respective directions are as follows: (WKIP Ex. 9, pp. 6, 7, 8, 30, 31, 32, 40)

	Present		Proposed	
	Distance (miles)	Effective field (mv/m)	Distance (miles)	Effective field (mv/m)
North	21.5	275	21.5	270
East	12.0	190	14.0	270
South	8.5	[1] 75	15.0	270
West	13.5	210	15.0	270

[1] From 140° to 210° true including directions toward Stations WNAB and WCTC; 250 mv/m is now radiated toward Station WMAS (WKIP Ex. 9, pp. 10, 40).

12. The population and area data for the present and proposed WKIP operations are as follows: (WKIP Ex. 9, pp. 6, 7, 8, 16, 17, 30)

	Present		Proposed	
	Population	Area [1]	Population	Area [1]
2.0 mv/m	115,452	228	151,798	305
0.5 mv/m	190,935	740	249,555	1,063
Interference from WNAB, WMAS [2] (percent)	36,536 (19.14)	250	54,924 (22)	415
Interference-free	154,399	490	194,631	648
Gain			40,232	158
Loss			None	None

[1] Square miles.
[2] Objectionable interference to present and proposed Station WKIP from Station WCTC falls entirely within the area of objectionable interference from Station WNAB.

13. According to the 1970 U.S. Census, the population of the city of Poughkeepsie decreased 16.4% from 38,330 in 1960 to 32,029 in 1970, but the population of Dutchess County increased 26.3% from 176,008 in 1960 to 222,295 in 1970. Much of the county population increase has taken place in areas south of Poughkeepsie and especially in Wappinger town and East Fishkill town where the 1960 to 1970 increases amount to 130.1% and 132.1%, respectively. Thus, Station WKIP maintains that the importance to WKIP of increasing its signal toward the south is emphasized by county population growth. The proposed interference-free contour will include 158,413 persons within Dutchess County or 71.26% of the total county population as against 128,757 persons or 57.92% of the total county population with the present operation for an increase of 29,656 persons within the county (WKIP Ex. 9, p. 14). Approximately 73% of the population gain will occur in Dutchess County. All of the proposed gain area is located within New York State (WKIP Ex. 9, pp. 7, 30). Most of the gain occurs to

the south of Poughkeepsie. Urban areas gained within the proposed 2.0 mv/m contour contain 7,868 persons and include all of Wappingers Falls (pop. 5,607) located some 7 miles south of the center of Poughkeepsie and 2,261 persons in Myers Corner (total pop. 2,826) (WKIP Ex. 9, pp. 20, 30–32).

AVAILABILITY OF OTHER SERVICES IN GAIN AREAS

14. Nine standard broadcast stations now provide primary service (0.5 mv/m or greater) to all of the *rural gain area* and 20 other such stations serve various portions thereof. In addition, two FM stations now provide FM service (1.0 mv/m or greater) to all of it and five other FM stations serve portions thereof. A minimum of 17 and a maximum of 27 aural services are available thereto (WKIP Ex. 9, pp. 8, 9, 18, 19). Standard broadcast station WEOK in Poughkeepsie serves at least 75% of the rural gain area and FM stations WEOK–FM and WSPK in Poughkeepsie each serve all of the rural gain area. Two standard broadcast stations now provide primary service (2.0 mv/m or greater) to all of the *urban gain area* and eight other such stations serve various portions thereof. In addition, 3 FM stations provide FM service (1.0 mv/m or greater) to all of the urban gain area and 4 others serve various portions thereof. As a result, from 12 to 14 aural services are available thereto (WKIP Ex. 9, pp. 20, 21). Station WEOK in Poughkeepsie serves at least 75% of the urban gain area and FM stations WEOK–FM and WSPK in Poughkeepsie each serve all of the urban gain area. There are 12 aural services available to all of Wappingers Falls [4] and 13 aural services available to all of Myers Corner (WKIP Ex. 9, p. 20).

INTERFERENCE FROM THE PROPOSAL

A. Objectionable Interference to Station WCTC, New Brunswick, N.J. (1450 kHz, 250 W, 1 Kw-LS, U)

15. The impact on Station WCTC, New Brunswick, N.J. by Station WKIP is shown in the following tabulation [5] (WKIP Ex. 9, pp. 9, 10, 22, 35):

	Population	Area (sq. mi.)
WCTC 0.5 mv/m normally protected contour	1,000,000	1,318
Interference from WFPG, WNAB and WILM	95,814	555
	(9.58%)	(42.11%)
Present interference-free	904,196	763
Additional interference from proposed WKIP [1]	3,246	60
	(0.32%)	(4.55%)
Total interference	99,060	615
	(9.9%)	(46.66%)
New interference-free	900,950	703

[1] In all cases herein, the interfering 0.025 mv/m contour of Station WKIP was based on its 1966 proof-of-performance data combined with conductivity values from Fig. M-3 of the Rules beyond. The objectionable interference developed on Stations WCTC, WMAS and WNAB by proposed Station WKIP is the same as that which occurred when Station WKIP operated omnidirectionally with 1 kilowatt power from January 24, 1963 to August 13, 1963 under a construction permit granted September 5, 1962. Differences from that shown in 1961 in data filed with the Commission result from the 1966 WKIP proof-of-performance and use of the 1970 U.S. Census (WKIP Ex. 9, pp. 8, 10, 12, 22, 24, 26).

[4] Station WKIP does not serve Wappingers Falls at present (WKIP Ex. 9, p. 32).

[5] An effective field of 189 mv/m was used for Station WCTC in conjunction with ground conductivity values from Fig. M-3 of the Rules (WKIP Ex. 9, pp. 6, 35).

The added objectionable interference would fall in rural areas 16 to 21 miles generally north of the WCTC site (WKIP Ex. 9, p. 35). Twelve standard broadcast stations provide primary service (0.5 mv/m or greater) to all of the added area (WKIP Ex. 9, pp. 10, 23, 36).

B. Objectionable Interference to Station WMAS, Springfield, Mass. (1450 kHz, 250 W, 1 Kw-LS, N, IV)

16. The impact on Station WMAS, Springfield, Mass. by Station WKIP is tabulated below [6] (WKIP Ex. 9, pp. 9, 10, 11, 24, 37):

	Population	Area (square miles)
WMAS 0.5 mv/m normally protected contour	483,198	800
Interference from WTSA, WSVP, WNAB and WKIP [1]	37,752	258.9
	(7.81%)	(32.36%)
Present interference-free	445,446	541.1
Additional interference from proposed WKIP	1,911	14.0
	(0.4%)	(1.75%)
Total interference	39,663	272.9
	(8.21%)	(34.11%)
New interference-free	443,535	527.1

[1] 908 persons (0.19 percent) in an area of 19.9 square miles (2.49 percent) receive objectionable interference from present Station WKIP alone.

The additional objectionable interference falls in rural areas 11.5 to 15 miles west and southwest of the WMAS site. Seven standard broadcast stations provide primary service (0.5 mv/m or greater) to all of the additional area, ten serve varying portions and from 10 to 14 AM signals plus at least 5 FM signals (1.0 mv/m or greater) are available in any one sector (WKIP Ex. 9, pp. 11, 25, 38). One of the FM stations which serves all of the additional area is WHVY-FM, which has the same ownership as WMAS and duplicates 50% of the WMAS programming (WKIP Ex. 9, p. 11).

C. Objectionable Interference to Station WNAB, Bridgeport, Connecticut (1450 kHz, 250 W, 1 Kw-LS, U, IV)

17. The impact from the proposed WKIP operation on Station WNAB, Bridgeport, Connecticut is as follows [7] (WKIP Ex. 9, pp. 12, 13, 26, 37):

	Population	Area (sq. mi.)
WNAB 0.5 mv/m normally protected contour	518,683	872.0
Interference from WVOX, WFPG, WSVP, WMAS, WCTC, and WKIP [1]	56,746	434.8
	[2](10.94%)	(49.88%)
Present interference-free	461,937	437.2
Additional interference from proposed WKIP [3]	26,747	109.6
	(5.16%)	(12.57%)
Total interference	83,493	544.4
	(16.19%)	(62.43%)
New interference-free	435,190	327.7

[1] 1,768 persons (0.34 percent) in an area of 6.8 square miles (0.78 percent) receive objectionable interference from present Station WKIP alone.

[2] 38,849 of the 56,746 persons reside on Long Island.

[3] Of these 26,747 persons, 5,225 comprise 19.4 percent of the Bridgeport SMSA; 7,391 comprise 27.63 percent of the Norwalk SMSA; 487, 1.82 percent of the New Haven SMSA; 75, 0.28 percent of the Danbury SMSA; and 13,569 reside in no SMSA. Of the total, 19,777, or 73.94 percent reside in Fairfield County, including 7,391 in Wilton town, 4,149 in Weston town, 4,193 in Redding town and 4,044 in Newtown town. Wilton and Weston are near Norwalk and Wilton is part of the Norwalk SMSA. Redding and Newton are near Danbury outside of any WMSA. Norwalk and Danbury have local AM and FM stations (WKIP Ex. 10, pp. 2, 3).

[6] An effective field of 241 mv/m was used for Station WMAS in conjunction with ground conductivity values from Fig. M-3 of the Rules (WKIP Ex. 9, pp. 6, 30, 37).

[7] An effective field of 237 mv/m was used for Station WNAB in conjunction with ground conductivity values from Fig. M-3 of the Rules (WKIP Ex. 9, pp. 6, 12, 30, 37).

The added interference area lies entirely in the state of Connecticut in rural areas 8.5 to 14 miles southwest, west, northwest, north and northeast of the WNAB site (WKIP Ex. 9, pp. 12, 13, 26, 37).

18. Any interference from proposed Station WKIP that occurs on Long Island falls in urbanized areas which are not served by Station WNAB (WKIP Ex. 9, pp. 14, 37, 39). Nine standard broadcast stations provide primary service (0.5 mv/m or greater) to all of the new area of objectionable interference to Station WNAB, 29 serve portions and from 15 to 24 standard broadcast stations serve any one portion thereof (WKIP Ex. 9, pp. 13, 27, 28, 39).

Conclusions

1. Olympian Broadcasting Corp. seeks authorization to change the daytime facilities of Station WKIP at Poughkeepsie, New York. The nighttime operation would remain unchanged. Station WKIP operates as a Class IV station, unlimited time, on 1450 kHz with 1 kilowatt power daytime and 250 watts at night employing a two-element directional antenna during daytime hours. Under the proposal, Station WKIP would change to a non-directional operation daytime using a 340 ft. top-loaded antenna with an effective field of 270 mv/m.

2. In its order of designation in the present proceeding, the Commission stated that, from data on file, it is clear that the proposed WKIP daytime omnidirectional operation, utilizing the highly efficient radiator, will result in an increase in overlap to the co-channel Class IV operation of Station WNAB (and possibly others) in excess of that caused by either the present 1 Kw daytime directional operation or by omnidirectional operation with 1 Kw utilizing the originally authorized WKIP antenna system which radiated 150 mv/m/kw.

3. Poughkeepsie, with a population of 32,029 persons, is the County Seat of Dutchess County, which has a population of 222,295 persons. It lies some 60 miles north of the center of New York City outside of any urbanized area or standard metropolitan statistical area. Two AM, two FM and no TV stations are licensed to Poughkeepsie.

4. The proposed omnidirectional operation would cause no loss of service to persons presently served by WKIP and would result in a gain of WKIP primary service daytime involving 40,232 persons in an area of 158 square miles. WKIP would realize a 26% population gain under its proposed operation. The gain area includes 29,656 persons located in the southern part of Dutchess County in Wappinger town and East Fishkill town, both of which have grown some 130% since 1960.[3] The population gain in Dutchess County would constitute approximately 73% of those receiving a new service from Station WKIP. Of the 29,656 population gain in Dutchess County, 5,607 persons reside in Wappingers Falls, located some seven miles south of the center of Poughkeepsie, and 2,261 persons in Myers Corner.

5. Nine standard broadcast stations now provide primary service to all of the proposed rural gain area and two FM stations now serve all of it. In addition, 20 other AM stations and 2 other FM stations serve

[3] Wappinger town has a population of 22,040 and East Fishkill town, a population of 11,092 (Off. Not., 1970 U.S. Census).

various portions thereof. A minimum of 17 and a maximum of 27 *aural* services are now available in the *rural* gain area. Standard broadcast station WEOK in Poughkeepsie serves at least 75% of this area and FM stations WEOK–FM and WSPK in Poughkeepsie each serve all of it. Two standard broadcast stations serve all of the urban gain area and 8 other AM stations serve portions thereof. In addition, 3 FM stations provide service to all of the urban gain area and 4 others serve portions thereof. Consequently, from 12 to 14 *aural* services are now available to the *urban* gain area.

6. The applicant's proposal would cause additional objectionable interference to Station WCTC, New Brunswick, New Jersey, affecting 3,246 persons and 60 square miles. The increase in interference in terms of population would be 0.32%, raising the interference to Station WCTC caused by other stations from 9.58% to 9.9%. Twelve AM stations provide service to all of the new interference area. The small (0.32%) amount of interference to WCTC that would be occasioned by the proposal can be aptly characterized as "minimal".

7. Objectionable interference would also be caused by the proposed operation to Station WMAS, Springfield, Massachusetts. This interference would be additional to that now received by Station WMAS and would affect 1,911 persons in 14 square miles, thereby raising the interference in terms of population from 7.81% to 8.21%, or 0.4%. From 10 to 14 AM signals and at least 5 FM signals are available to the additional interference area. The above-mentioned data indicate that only minimal interference to Station WMAS would be caused by the WKIP proposal.

8. Station WNAB, Bridgeport, Connecticut, would receive additional interference from the WKIP proposal to the extent of 26,747 persons in an area of 109.6 square miles. In terms of population, the additional interference would constitute 5.16%, raising the total interference to Station WNAB from 10.94% to 16.10%. Of those persons affected by the added interference, 73.94% (19,777 persons) reside in Fairfield County in which Bridgeport is located. From 15 to 24 AM stations serve the new Station WNAB interference area.

9. The applicant notes that Station WKIP will again be using the same omnidirectional antenna system during daytime hours for which it held authorization during a period of about eleven months in 1962 and 1963 and with which it actually operated from January 24, 1963 to August, 1963.[9] This was the result of a Commission action taken September 5, 1962, whereby Station WKIP was granted a construction permit to increase daytime power from 250 watts to 1 kilowatt using an omnidirectional antenna and at the same time increase antenna efficiency from 150 mv/m to 270 mv/m. The power increase was made in accordance with a Commission action on May 28, 1958, when it amended the rules to provide that Class IV stations may be authorized a maximum daytime power of 1 kilowatt (17 RR 1541). Previously, the power for this class station had been limited to 250 watts. On August 14, 1963, Station WKIP reduced the daytime an-

[9] Station WKIP operated with the proposed 340 ft. tower at reduced antenna efficiency of 150 mv/m/kw effective field under interim authority for a period of 2 years and 7 months from August 14, 1963 to March 14, 1966.

tenna efficiency to 150 mv/m/kw to avoid overlap with a commonly owned station, and on September 15, 1965, received authorization for its present directional antenna. Subsequent to the above-mentioned grant for power increase and increase in antenna efficiency to 270 mv/m made September 5, 1962, the Commission determined that, in the absence of a showing that objectionable interference would not result, the normal benefits which would accrue from power increases to 1 kilowatt would not be achieved unless the power increases were accomplished without any increase in antenna efficiency (footnote 6, designation Order).

10. Although the Commission, in the order of designation, did not specifically state that it viewed the proposal to go from 1 kilowatt directional to 1 kilowatt non-directional operation in the same light as a power increase of a Class IV station, it did note that the requested effective field of 270 mv/m/kw was in excess of the 150 mv/m/kw radiated by Station WKIP in late 1962 when it operated with 250 watts power daytime for the last time, and pointed out that, in addition to changing from directional to non-directional operation daytime, the applicant was simultaneously requesting an increase in effective field beyond that allowed under existing policy when a Class IV station increases daytime power.

11. The issues specified in this proceeding require a determination relative to the gain or loss of WKIP primary service as well as to the impact of the proposed operation on the operations of three existing stations. The long-established decisional test applied by the Commission to the facts ascertained under these issues where there is resulting objectionable interference is "whether the need for the proposed service outweighs the need for the service which will be lost by reason of such interference." The findings of fact show that the applicant's rural gain area receives from 17 to 27 aural services and that the urban gain area receives from 12 to 14. Two Poughkeepsie FM stations serve all of the gain area, both rural and urban portions, and AM station WEOK in Poughkeepsie serves at least 75% of the gain area, both rural and urban portions. Thus, the population in the gain area, approximately 73% of whom reside in Dutchess County, now enjoy an abundance of radio service which includes FM service from 2 Poughkeepsie stations and AM service in at least 75% of the gain area from a Poughkeepsie station. Similarly, the populations in the areas of objectionable interference that would be suffered by Station WMAS, WCTC and WNAB all receive a plenitude of service since at least 10, 12 and 15 AM services are available to them, respectively. Based upon consideration of the number of services available to the proposed WKIP gain area and to the areas which would lose service, it is concluded that the applicant has not made a persuasive showing of a preponderating need for service to such gain area.

12. It is true that the applicant can point to a gain of some forty thousand persons which would constitute a 26% increase in population served and also result in a net gain of about 8,500 persons. But these gains in service can be given no overwhelming weight since there are so many services already available to the gain area and, significantly, loss of service to WNAB involving 26,747 persons would increase from 10.94% to 16.10% of the population in its normally protected contour.

No justification for this added substantial encroachment has been shown. WKIP has urged that grant of its application would only reinstate the antenna formerly authorized for its operation and would allow it to regain areas it had served from January to August, 1963. However, it is of decisional significance to note, as the Commission did in footnote 6 of the designation Order, that the 1962 omnidirectional increase in daytime power and antenna efficiency authorized for WKIP was made *prior* to the Commission's determination that a Class IV station power increase should be accomplished without an increase in antenna efficiency. There is nothing in Commission regulation or policy which lends color to the applicant's implicit claim that the 1962 authorization gave rise to an indefeasible equity which the Commission is bound to recognize at this time. This contention must fail when it is realized too that the intent of the Commission in permitting Class IV increases to 1 Kw was based on the assumption that the power increase would be on a uniform basis and that permitting some Class IV stations to install new antenna systems with greatly increased efficiency would frustrate this intention.

13. It must be observed that applicant's reliance on the Commission's ruling in *North Shore Broadcasting Corp.* (*WESX*), 8 FCC 2d 741, 742 (1967), and the Examiner's decision in *North Shore Broadcasting Corp.*, 12 FCC 2d 687 (1968), is misplaced. The first of these cited cases, insofar as apposite, involved a matter of increased overlap to a commonly owned station resulting from an antenna change which the Commission treated to the same effect as a power increase. The point at issue was whether Section 73.35(a) of the Rules should be waived. The present proceeding involves neither Section 73.35(a) nor the question of overlap. As for the second *North Shore* case, *supra*, suffice it to say that had a net population gain of 244,512 persons to the applicant, removal of interference to a second station involving over 6,000 persons, and replacement of service from the same station involving 860 persons. Because of the egregious disparity between the gain and loss figures in the cited case and the present one, the efficacy of the former as a precedent is less than microscopic.

14. Since it has been concluded that the applicant has failed to satisfy the preponderant need test and has not otherwise shown that Commission regulations, policy or precedent justify a grant of its application, it follows that a grant would not be in the public interest.

Accordingly, IT IS ORDERED, That, unless an appeal from this Initial Decision is taken by a party or the Commission reviews the Initial Decision on its own motion, in accordance with the provisions of Section 1.276 of the Rules, the application of Olympian Broadcasting Corp. to change the daytime mode of operation of Station WKIP, Poughkeepsie, New York, from directional to non-directional, utilizing a 340 ft. top-loaded tower radiating an effective field of 270 mv/m/kv IS DENIED.

ISADORE A. HONIG,
Hearing Examiner,
Federal Communications Commission.

109-029—73——12

F.C.C. 73-170

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
RADIO WLTO, INC., MIAMI, FLA.
For Change of Call Sign From WLTO to WCMQ

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 21, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. We have for consideration the above-captioned application; an objection thereto dated October 13, 1972, from CMQ Corporation, Miami, Florida; staff actions of October 25 and November 1, 1972, denying the objection and assigning the call sign WCMQ to Radio WLTO; CMQ Corporation's Application for Review of staff action filed November 24, 1972; Radio WLTO's Opposition of December 7, 1972; and all responsive and related pleadings.

2. The complainant (CMQ Corporation) is a Miami-based organization engaged in the production and distribution of Spanish-language radio programming throughout the Western Hemisphere, and views the above-captioned call sign change as a transparent and undenied effort by Radio WLTO (a Spanish-language broadcaster) to traffic in its corporate name, reputation, and good will. The principals behind the CMQ Corporation (Mr. Abel Mestre and members of his family) were the owners of Circuito CMQ, S.A., the licensee of radio station CMQ, Havana, during the pre-Castro years. Radio station CMQ was nationalized by the Castro government in 1960, and now operates from Santa Clara, Cuba, on 630 kHz. The staff was not aware when it granted the change in call sign that radio station CMQ was still in operation and that it still delivers a listenable signal in the Miami area.

3. The staff denial of CMQ Corporation's earlier objection was premised, in part, on our holdings in *Shamrock Development Corporation (WDIZ)*, 32 FCC 2d 82 (1971), and *United Television, Inc. (KMGM-TV)*, 14 RR 573 (1956), in which we declined to protect the trade names of non-licensees against the assignment of radio and television call signs alleged to be confusingly similar. Such objections, we held, are properly adjusted by private litigation.

4. While conceding the validity of these precedents, CMQ Corporation, as a major supplier of the very type of programming carried by Radio WLTO, seeks to distinguish its situation from businesses and organizations having fewer ties with the broadcast industry. Citing *National Broadcasting Company*, 37 FCC 427 (1964), *Sarkes Tarzian, Inc.*, 24 FCC 2d 643 (1970), and *KSID, Inc.*, 22 FCC 2d 833 (1970),

wherein we considered the anti-competitive and unfair trade practices of applicants and licensees in other contexts, CMQ Corporation asserts that its unique relationship with the broadcast industry warrants a departure from the policy expressed in *Shamrock* and *United*, *supra*. We find it unnecessary to reach this question for, in our view, the case must be decided on other grounds.

5. Although not placed squarely in issue by either party to this dispute, the call sign CMQ, as already noted, is still in use in Cuba by a Class I–D station operating on a frequency designated internationally as a Cuban clear channel (630 kHz). Notwithstanding the absence of diplomatic relations with Cuba, we are compelled to take official notice of the fact that CMQ delivers a primary (groundwave) service throughout the Miami metropolitan area,[1] where it can be received by thousands of Spanish-speaking residents. The presence on the AM dial of a CMQ and a WCMQ, both Spanish-language stations, certainly creates confusion concerning station identity or at least the impression that the two stations are somehow linked in ownership and operation. Wholly apart from any question of affording call sign protection to the Cuban government, we find this arrangement to disserve the listening public in the Miami area.

6. Accordingly, IT IS ORDERED, That CMQ Corporation's Application for Review IS GRANTED; the staff actions of October 25 and November 1, 1972, denying CMQ Corporation's initial objection and assigning the call sign WCMQ to Radio WLTO ARE SET ASIDE; and CMQ Corporation's initial objection of October 13, 1972, IS SUSTAINED.

7. IT IS FURTHER ORDERED, That if a new call sign is desired, an application for five (5) call-letter combinations, in descending order of preference, SHALL BE SUBMITTED FORTHWITH by Radio WLTO, Inc., in accordance with the provisions of section 1.550 of our rules, but without payment of filing fee.

8. IT IS FURTHER ORDERED, That if Radio WLTO fails to file such an application within ten (10) days after the release of this Memorandum Opinion and Order, it SHALL REVERT to the use of its former call sign (WLTO), and SHALL NOTIFY the Commission accordingly.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[1] In listening tests conducted February 2, 1973, by our Miami field office, CMQ's signal strength was measured at three separate locations in downtown Miami. The values obtained were 5 mV/m, 2.2 mV/m, and 2.5 mV/m.

F.C.C. 73R-77

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of JAY SADOW (WRIP), CHATTANOOGA, TENN.	Docket No. 18901 File No. BP-17792
ROCK CITY BROADCASTING, INC., CHATTANOOGA, TENN. For Construction Permits	Docket No. 18902 File No. BP-17993

Appearances

Martin E. Firestone, *Martin Blumenthal* and *Michael Finkelstein*, on behalf of Jay Sadow; *Morton L. Berfield*, *Edward Wholl* and *Lewis I. Cohen*, on behalf of Rock City Broadcasting, Inc.; and *Philip V. Permut*, *Charles A. Zielinski* and *William D. Silva*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted February 13, 1973; Released February 23, 1973)

BY THE REVIEW BOARD: BERKEMEYER, NELSON, AND PINCOCK.

1. This proceeding involves the application of Jay Sadow (Sadow) for a construction permit to change the operation of Class III standard broadcast Station WRIP from 980 kHz, 500 w, DA, day, Rossville, Georgia, to Class II, 1190 kHz, 50 kw, DA, day, Chattanooga, Tennessee, and the mutually exclusive application of Rock City Broadcasting, Inc. (Rock City) for a construction permit for a new Class II standard broadcast station on 1190 kHz, 10 kw, DA, day, Chattanooga, Tennessee. By Order, FCC 70-705, released July 9, 1970, the Commission designated the applications for hearing and by Orders, FCC 70R-362 and 71R-116, released October 27, 1970 and April 9, 1971, respectively, the Review Board enlarged the issues. Of the 12 issues tried, only a financial issue with respect to Rock City and a 307(b) issue with respect to Sadow remain in dispute.[1] In his Initial Decision, FCC 71D-85, released November 9, 1971, Administrative Law Judge Chester F. Naumowicz, Jr., concluded that the proposed relocation of Station WRIP from Rossville, Georgia, to Chattanooga, Tennessee, would not be a fair, efficient and equitable distribution of radio services and recommended denial of Sadow's application on that ground. The Judge resolved all issues relevant to Rock City favorably to it and recommended a grant to that applicant. In addition to exceptions filed by Sadow, the Review Board has before it several petitions

[1] No exceptions are addressed to the Presiding Judge's evaluation of *Suburban* and financial issues favorably to Sadow, engineering issues favorably to Rock City, and a Section 73.188(b)(2) issue favorably to both applicants. The Judge's conclusions under these issues are correct and will be affirmed.

for leave to amend filed by Rock City reporting and attempting to explain certain ownership and financial changes. The Board has reviewed the Initial Decision in light of the record, the exceptions and brief filed by Sadow, the reply filed by Rock City, and the arguments of the parties before a panel of the Board on October 5, 1972. We believe the Presiding Judge's findings are substantially accurate and his conclusions sound and, except as modified herein and in the attached Appendix, those findings and conclusions are adopted. Therefore, in this Decision, we shall treat briefly the major exceptions addressed to the Initial Decision, as well as discuss the petitions for leave to amend which we shall grant.

FINANCIAL ISSUE RE ROCK CITY

2. According to Rock City's estimates, it will require funds in an amount of $203,740 in order to construct its proposed station and operate for one year without reliance on revenues.[2] To meet this requirement, Rock City relies on a proposed $220,000 bank loan from the American National Bank and Trust Company. As evidence of the loan commitment, Rock City submitted a letter dated November 30, 1970, and signed by Cranston Pearce, Senior Vice President of the Bank, committing it to lend Rock City an amount "up to $220,000" with no principal payments due in the first year and interest at 8%. The bank letter states that the loan is to be guaranteed by Rock City Gardens, Inc., the applicant's parent corporation. Rock City also submitted a letter of the same date from E. Y. Chapin, III, its parent corporation's president and majority stockholder, confirming guarantee of the bank loan. The applicant introduced its balance sheet, dated October 30, 1970, which lists current assets of $8,696.26 and current liabilities of $84,144.75. Of this latter figure, $82,338.39 represents two notes payable, one for $60,000 to the American National Bank and Trust Company, and the other to Rock City Gardens, Inc. E. Y. Chapin, IV, president of the applicant, testified that the $60,000 represented a 90-day note which had been renewed regularly up to the time of the hearing. Chapin IV described the repayment schedule for the note, which was taken out on December 28, 1967, in the original sum of $65,000, and which has periodically fluctuated, as "extremely loose". The original plan was to repay one-third of the loan every two years, but this plan was not put in writing and the bank has not demanded the full $60,000. The loan was made in connection with Rock City's purchase of Station WLOM(FM), Chattanooga, Tennessee. The November 30, 1970, bank letter from Mr. Pearce states that the $220,000 loan is in addition to the earlier commitment. Finally, Rock City submitted a letter from counsel for the American National Bank and Trust Company stating their opinion that: (1) the $220,000 loan is binding upon the bank and not conditioned on repayment of any other loan; (2) Cranston Pearce could legitimately make the commit-

[2] Rock City's costs include: buildings, $30,000; equipment down payment, $17,250; legal, engineering, installation and miscellaneous expenses, $11,000; equipment payments and interest, $21,390; and first-year operating costs, $120,000. To the total figure, $4,100 should be added for the cost of detuning water tanks which exist in the vicinity of its transmitter site.

ment on behalf of the bank; and (3) the loan was not in contravention of state or federal banking law.

3. Sadow takes the position that the Presiding Judge, in concluding that Rock City is financially qualified, erred in not considering operating losses of Rock City's FM broadcast station, as well as its current liabilities. Specifically, Sadow argues that Rock City's commonly owned FM station has sustained an average loss over the last three years of $18,361 and that this figure must be included in the applicant's expenses. The applicant's total financial situation must be examined, Sadow maintains, citing *KSIG Broadcasting Company, Inc.* v. *FCC*, 445 F.2d 704, 21 RR 2d 2144 (1971); and Sawnee Broadcasting Co. (*WSNE*), 3 FCC 2d 561, 7 RR 2d 405 (1966), in support. As for Rock City's bank letter, Sadow notes that the letter does not expressly state that the bank will not demand payment on the 90-day $60,000 loan at the conclusion of any of the renewal periods. Therefore, Sadow contends, the $60,000 must be regarded as a current liability, thereby reducing Rock City's available funds by that amount. Sadow also excepts to the admission of the bank letter without supporting testimony from its author, Cranston Pearce. The Judge further erred, Sadow contends, in assuming that the $220,000 loan would be used exclusively in connection with Rock City's proposal. These funds, Sadow maintains, cannot be shielded from corporate obligations which may arise. Sadow concludes that Rock City will fall short of its needs and is hence not financially qualified.[3]

4. The Review Board is of the view that Rock City has satisfactorily established its financial qualifications. The bank commitment letter introduced by Rock City recites the amount and terms of the loan, the interest rate, and who the guarantor is. An applicant must provide "reasonable assurance" of the availability of a bank loan. One such form of assurance traditionally accepted is a bank commitment letter. *Tri-City Broadcasting Co.*, 35 FCC 364, 1 RR 2d 81 (1963). A bank loan commitment letter, absent a showing which questions the validity of the letter or the bank's ability to make the loan, satisfies Commission requirements. *McCreary Broadcasting Corp.*, 27 FCC 2d 964, 21 RR 2d 321 (1971); *cf. Lamar Life Broadcasting Co.*, 26 FCC 2d 932, 20 RR 2d 981 (1971). There is no record evidence casting doubt on the validity of the letter or the ability of the bank to make the loan; in fact, counsel for Sadow conceded the first point. The letter is signed by Cranston Pearce, Senior Vice President, and E. Y. Chapin III testified that he was familiar with Pearce, his duties and responsibilities at the bank, how the bank proceeded to make loans, and could state that Pearce had bank authorization to make a loan for the purpose and in the amount indicated. In these circumstances we believe reasonable assurance of the loan's availability has been furnished.

5. The Board also agrees with the Presiding Judge's ruling that the bank letter was admissible without the presence of its author, Cranston Pearce. See *Chapman Radio and Television Co.*, 6 FCC 2d 768, 9 RR 2d 595 (1967) and the cases cited therein. Sadow raised no objection

[3] Sadow adds that, although it has not discussed the $20,000 owed to Rock City's parent corporation, the record does not establish that the latter's financial status would preclude call of the debt.

to the authenticity of the bank letter; E. Y. Chapin, III, president and treasurer of Rock City and its parent corporation, and E. Y. Chapin, IV, vice president of the applicant, were both present to testify concerning the bank loan; and this testimony raised no questions which would require examination of bank officials. Indeed, other means of eliciting further information regarding the loan were offered and available to Sadow, but the latter chose not to pursue them. In these circumstances, we believe no legitimate challenge to the availability or validity of the loan has been raised by Sadow.

6. The Board does not agree with Sadow's contention that the prior $60,000 loan made in connection with Rock City's purchase of Station WLOM (FM), Chattanooga, should be considered part of Rock City's first-year costs. To begin with, E. Y. Chapin, III, testified that the $220,000 loan was to be used exclusively in connection with Rock City's AM proposal and that any additional monies needed for the FM station would come from other sources such as its parent corporation or further bank loans. The bank loan letter specifically states that the loan is in addition to the bank's previous commitment in connection with the purchase of WLOM, and the opinion letter of bank counsel states that the $220,000 commitment is not conditioned upon repayment of any pre-existing loans. The record also establishes that the terms of the $60,000 loan are flexible; that it has been renewed as a matter of course every 90 days; that it, too, is being guaranteed by Rock City's parent corporation; and that both corporations enjoy a close and harmonious business relationship with the bank. Given these circumstances, the Board is of the view that the supposition that the bank will call the $60,000 loan during Rock City's first year of operation is purely speculative and without evidentiary support.[4] The same may be said of the approximately $22,000 listed on Rock City's balance sheet as owing from it to its parent corporation, Rock City Gardens, Inc. Sadow inferentially questions whether this advance will be called during Rock City's first year of operation but supplies neither arguments nor record support for this unlikely proposition.

7. We do not agree with Sadow's contention that the Board must consider Rock City's losses in the FM station operation. The precedent cited by Sadow in support of his position is inapposite. *Sawnee Broadcasting Co.* (*WSNE*), *supra*, upon which Sadow places principal reliance, involved a Commission remand of a proceeding where an applicant was relying on revenue to finance his proposal but had not adequately supported its estimate. The applicant therein proposed modification of his standard broadcast station at the same time he proposed construction of a new FM station. The Commission, citing *Nelson Broadcasting Company*, FCC 64R–505, 4 RR 2d 87 (1964), held that the financial arrangements for both stations must be considered together. The important facts in *Nelson* were that the applicant relied on identical assets to support both proposed stations; he had not ear-

[4] Compare *Erwin O'Conner Broadcasting Co.*, FCC 72R–315, — FCC 2d —, where the Board did treat a 90-day note as a current liability. However, the showing in the instant case is far more persuasive than the one in *O'Conner*. Here, the surrounding circumstances, particularly the additional loan and the terms of its making, are consistent with the conclusion that the earlier loan need not be treated as a current liability; in *O'Conner* the record did not contain such supporting details.

marked which assets were to be used for which proposal; and the assets were not sufficient to support both operations. The situation with respect to Rock City, however, is significantly different. First, Rock City does not rely upon revenues from either Station WLOM or its proposed standard broadcast station. Second, its FM station is on the air and does not therefore require comparable initial construction and operation outlays. Most important, the record clearly establishes that the $220,000 loan is earmarked exclusively for the AM proposal. Also, the record indicates other sources of financing for the FM station, and there is recent evidence of revenue from the FM operation. All things considered, we believe the Judge's conclusion that Rock City is financially qualified should be affirmed.

8. On May 25, 1972, subsequent to the issuance of the Initial Decision, Rock City filed a petition for leave to amend its application. The amendment reports the creation by Rock City of an option to purchase its FM station, WLOM, in favor of Turner Communications Corporation (Turner) as well as other changes in stock ownership and management in its parent corporation.[5] On September 28, 1972, Rock City filed a second petition for leave to amend reporting that on September 8, 1972, the Commission accepted for filing an application for assignment of WLOM (FM) from Rock City to Turner. At oral argument, held October 5, 1972, Broadcast Bureau counsel pointed out that the assignment application included a Rock City balance sheet listing notes payable in the amount of $123,000, approximately $41,000 higher than those listed on the balance sheet submitted at the hearing. The Bureau therefore took the position that, although it concurred with the Administrative Law Judge's determination that Rock City was financially qualified on the basis of the hearing record, it could not make that determination now without knowing the nature of the additional liabilities. Therefore, counsel for Rock City expressed the desire to explain the difference and the Board invited him to file an additional pleading and afforded the other parties an opportunity to respond. (Tr. 267.)

9. Rock City, on October 12, 1972, filed a supplement to petition for leave to amend, reporting that the $123,000 consists of the $65,000 90-day note which has been regularly renewed since its execution at the time of acquisition of WLOM in January, 1968, and $58,000 in notes payable to the corporate parent company, Rock City Gardens, Inc., and concluding that Rock City's financial position remains basically the same as it was at hearing. In comments, filed October 13, 1972, Sadow argues that Rock City's amendment does not explain the increase in the 90-day note from $60,000 at the time of the hearing to its present $65,000, nor does it contain a specific one-year moratorium on the note from the bank; therefore, Sadow contends, Rock City is not financially qualified. In its comments, filed October 16, 1972, the Bureau, in addition to expressing continuing uncertainty as to Rock City's financial condition argues that a Rule 1.65 question is raised as well because of the failure to report $41,000 in new liabilities. In

[5] On May 26, 1972, Sadow filed a response, and on June 7, 1972, the Bureau filed comments on the petition for leave to amend.

response to comments by the other parties, particularly the Broadcast Bureau, Rock City, on November 8, 1972, filed a second supplemental petition for leave to amend. In its second supplemental petition, Rock City includes a new letter from the lending bank, dated October 31, 1972, affirming that the $220,000 loan upon which the applicant relied at hearing to establish its financial qualifications is still available and is in addition to the prior loan made in connection with the WLOM (FM) application. Therefore, Rock City states, it is still financially qualified. Rock City also argues that no significant changes re Rule 1.65 have occurred because the $220,000 loan is still available, the increased liabilities represent internal corporate notes, and the earlier bank loan, originally $65,000, then $60,000 at the time of the hearing, and which went to $65,000 again in June, 1971, does not affect its available loan funds. In an opposition, filed November 14, 1972, Sadow maintains that Rock City's latest amendment should be rejected since it could have included that same material in its October 12, 1972 amendment. Sadow reiterates that Rock City has again failed to answer the serious questions Sadow raises concerning its financial qualifications. However, in its comments, filed November 17, 1972, the Bureau takes the position that Rock City has now adequately explained the circumstances surrounding its reported increase in liabilities, that no need for remand of the proceeding exists, and that Rock City is financially qualified.

10. The Board is of the view that no serious challenge to Rock City's financial qualifications is raised by the recent series of amendments and pleadings and that no need to remand the proceeding exists. The situation which prevailed at hearing remains basically the same. That is, Rock City continues to rely for its financial showing upon a $220,000 bank loan, which is sufficient to offset its estimated first-year costs and the availability of which has been continuously demonstrated by bank letters, the most recent of which is dated October 31, 1972. And, while the amounts of the liabilities questioned by Sadow have increased slightly, the nature of the liabilities, *i.e.*, intercorporate debts and a 90-day bank loan remains the same, and their significance clearly is no greater now than at the time of the hearing. Sadow's only noteworthy argument is that Rock City should have submitted a letter from the bank specifically stating that the $65,000 note would not be called in a particular period of time. However, this is the same argument made by Sadow in his exceptions and supporting brief and, as such, it is dealt with at paragraph 7, *supra*. For the reasons stated therein, and because of the nature of the bank letters, which consistently assure that the $220,000 is above and distinct from the earlier $65,000 loan, we believe a reasonable inference may be drawn that the bank will not thwart the entire plan by calling the full $65,000 loan during the critical first-year period. With respect to the bulk of reported increased liabilities on Rock City's balance sheet, they assume no greater significance now than they did at the time of the hearing in that they are intercorporate obligations owing to the parent corporation from the wholly-owned subsidiary. That no justification for remand exists at this time is further demonstrated by the fact that Sadow had an

unrestricted opportunity to explore the intercorporate debts as they existed at the time of hearing. Indeed, at oral argument, counsel for Sadow indicated that he did not consider it likely that the parent would call these liabilities and so did not press this point. (Tr. 253.) It is also noteworthy that, in his most recent pleadings, while Sadow urges that Rock City has not adequately explained the circumstances surrounding the changes, he does not specifically request remand or further cross-examination. Because the Board does not view these matters as being significant, we do not believe a Rule 1.65 inquiry is called for either. Instead, we agree with the Bureau that Rock City has satisfactorily explained its present financial status and that reasonable assurance exists that the loan funds it relies upon are available to it. For all the reasons stated, we conclude that Rock City is financially qualified and that the recent amendments should be accepted.[6]

SECTION 307(b) ISSUE RE SADOW

11. Sadow proposes to relocate Station WRIP from Rossville, Georgia, 1960 population 4,665, to Chattanooga, Tennessee, 1960 population 130,009.[7] In addition to WRIP, Rossville has licensed to it WRIP-FM, also operated by Sadow. Chattanooga has licensed to it 6 standard broadcast stations, 5 FM stations, 3 VHF and 2 UHF (one educational) television stations. The relocation of WRIP would result in a net gain in service to 179,750 persons in 4,425 square miles and 1,790 persons would lose their present service from Station WRIP. Within the 0.5 mv/m rural gain area 63 other standard broadcast signals are available as well as 15 1 mv/m FM services. There are a minimum of 2 standard broadcast services available and a maximum of 17 within the rural gain area; considering FM, there are a minimum of 3 and a maximum of 23. Due to discontinuance of pre-sunrise operation, proposed Station WRIP would lose from 15 minutes to 1 hour and 45 minutes of its present broadcast day, depending on time of year, or from 1.9% of its broadcast day to 15.4% in its new operation.

12. The Board is of the view that these facts clearly warrant the Presiding Judge's conclusion that the objectives of Section 307(b) would be disserved by a grant of Sadow's application. Where an applicant seeks to withdraw service it must establish that its proposal is consistent with the mandate of Section 307(b) of the Act. See *Pioneer States Broadcasters, Inc.*, 34 FCC 625 (1963). In *Central Coast Television*, 14 FCC 2d 985, 14 RR 2d 575 (1968), the Board stated the controlling principle as follows: "[O]nce in operation, a station assumes an obligation to maintain service to its viewing audience and the withdrawal or downgrading of existing service is justifiable only if offsetting factors are shown which establish that the public generally will be benefited." 14 FCC 2d at 1000, 14 RR 2d at 596 (citing *Triangle Publications, Inc.* (*WNHC-TV*), *supra*, 37 FCC at 313, 3

[6] On December 11, 1972, Sadow filed a petition for leave to amend reporting the filing on October 24, 1972, of an application for modification of the facilities of Station WRIP-FM, Rossville, Georgia. No opposition to this pleading has been filed and we believe the amendment should be accepted.

[7] Preliminary 1970 Census figures show 3,727 persons living in Rossville and 113,003 living in Chattanooga.

RR 2d at 47). See also *Television Corporation of Michigan* v. *FCC*, 111 U.S. App. D.C. 101, 103, 294 F. 2d 730, 732, 21 RR 2107, 2110 (1961); *Hall* v. *FCC*, 99 U.S. App. D.C. 86, 91, 237 F. 2d 567, 572, 14 RR 2009, 2012 (1956). Here, the only substantial public interest benefit which would result from a grant of Sadow's application is a large gain in the number of persons who would receive the signal of WRIP. However, none of the persons in the gain area are underserved, and, to be weighed against this benefit, are the following detriments: a small number of persons would lose service from WRIP, those who would continue to receive the signal would no longer receive the presunrise operation, and Rossville would lose one of its two, and its only AM, transmission service. We cannot find that the service gain outweighs these detriments, particularly the loss of Rossville's only local AM and its second local aural transmission service,[8] and we therefore must conclude that Sadow's proposal is violative of the goals of Section 307(b).[9]

13. In the face of contrary policy and precedent, Sadow seeks to justify his designed move on the basis of what the Judge termed a "regional or metro" theory of station allocations. However, despite Sadow's assertions and intentions, Commission policy would require, if the instant application is granted, that his primary obligation be to Chattanooga, his proposed city of license, and not to Rossville.[10] See *e.g.*, Report and Order, *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971); *cf. Star of the Plains Broadcasting Co.* v. *FCC*, 267 F.2d 629, 18 RR 2072 (1959); *Dennis A. and Willard D. Sleighter (WWDS)*, 6 FCC 2d 662, 9 RR 2d 320 (1967); *Service Broadcasting Corp.*, 36 FCC 1085, 2 RR 2d 539 (1964). Furthermore, Sadow's attempts to show that Rossville's activities and business are only an extension of those of Chattanooga are unpersuasive. The record reflects that Rossville is an independent community. Although there are similarities and ties between Rossville and Chattanooga, Rossville has its own government, police force and fire department, parks and recreational facilities, and financial and business institutions. In other words, it possesses the governmental, social and economic attributes of an independent community. See *Service Broadcasting Corp.*, *supra;* compare *Risner Broadcasting, Inc.*, *supra*. Indeed, both Sadow, by virtue of his selection of Rossville as sites for an AM and FM station, and the Commission, by virtue of its grants to Sadow for those facilities, have

[8] See *Babcom, Inc.*, 24 FCC 2d 690, 19 RR 2d 883 (1970), reconsideration denied 27 FCC 2d 437, 21 RR 2d 6 (1971), reversed and remanded on other grounds 31 FCC 2d 425, 22 RR 2d 828 (1971), where the Board discussed the significance of a choice of transmission services.

[9] In *WKYR, Inc.* (*WKYR*), 37 FCC 132, 3 RR 2d 1 (1964), the Board did grant an application to move an AM facility to a nearby larger community and to change operation from daytime-only to fulltime. However, the Board pointed out, *inter alia*, that the larger community was a more influential population center; that despite this fact it only had licensed to it two Class IV stations whereas the small town had licensed to it two Class III stations; that the proposal would be more efficient because it would provide a full-time operation; and that the smaller community would retain one local transmission service. By contrast, in this proceeding, there is no such disparity between the size of the communities and services licensed to them; Sadow's proposal is less efficient in terms of hours of operation; and Rossville would be left with no local AM service.

[10] Even if he could show that Chattanooga-Rossville was a community pursuant to Section 73.30(a) of the Rules, he cannot at this point, and without amending, seek to specify a community other than the one applied for. *Risner Broadcasting, Inc.*, 20 FCC 2d 790, 17 RR 2d 1215 (1969); *Five Cities Broadcasting Co., Inc.*, 35 FCC 501 (1963).

recognized the independent existence of Rossville. The Commission has also made clear that to qualify as a community, a place of station location must be "an identifiable population grouping separate and distinct from all others; and that . . . [it] must not enclose *or contain areas or populations more logically identified as*, or associated with, *some other location.*" (Emphasis supplied.) *Seven Locks Broadcasting Co.*, FCC 62–140, 22 RR 967. Rossville's characteristics as a community have already been set forth and Sadow would hardly argue that Chattanooga has no independent existence.[11] Therefore, it is difficult to see how the Chattanooga-Rossville area could qualify as a separate community. Finally, Sadow relies on *Radio Crawfordsville, Inc.*, 34 FCC 996 (1963), for the proposition that the Commission may make its own determination as to what constitutes a community. However, that case, a forerunner to the Suburban Community doctrine, involved a determination of whether a proposal is realistically designed to serve a smaller suburb or a metropolitan complex. The analytical approach taken therein was subsequently rejected by the Commission in its 1965 *Policy Statement*, *supra*, and, in any case, is plainly irrelevant to the issues in this case.[12] Under these circumstances, the Board is of the view that the application of Jay Sadow must be denied under the 307(b) issue and that the application of Rock City, being fully qualified should be granted.

14. Accordingly, IT IS ORDERED, That the petitions for leave to amend, filed May 25 and September 28, 1972, the supplement to petitions for leave to amend, filed October 12, 1972, and the second supplemental petition for leave to amend, filed November 8, 1972, by Rock City Broadcasting, Inc., ARE GRANTED, and the amendments contained therein ARE ACCEPTED; and

15. IT IS FURTHER ORDERED, That the petition for leave to amend, filed December 11, 1972, by Jay Sadow, IS GRANTED, and the amendment contained therein IS ACCEPTED; and

16. IT IS FURTHER ORDERED, That the application (BP–17792) of Jay Sadow for a construction permit to change the operation of standard broadcast Station WRIP from Class II, 980 kHz, 500 w, DA, day, Rossville, Georgia, to Class II, 1190 kHz, 50 kw, DA, day, Chattanooga, Tennessee, IS DENIED, and the application (BP–17793) of Rock City Broadcasting, Inc., for a construction permit for a new standard broadcast station, Class II, 1190 kHz, 10 kw, DA, day, Chattanooga, Tennessee, IS GRANTED.

DONALD J. BERKEMEYER,
Member, Review Board,
Federal Communications Commission.

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[11] Sadow did not request dual-city identification. No dual-city identification issue is in the case. See Section 73.30(b) of the Rules and *St. Anthony Television Corp.*, FCC 64–730, 2 RR 2d 348.

[12] We would also reject Sadow's exception questioning the Presiding Judge's suppression of interrogatories designed by Sadow to ascertain program service offered Rossville by other area stations. The Judge correctly ruled that such evidence is precluded under 307(b) absent a specific issue and that the interrogatories would therefore serve no purpose. See *Dennis A. and Willard D. Sleighter (WWDS), supra; Central Broadcasting Corp.*, FCC 64R–399, 3 RR 2d 594; *Cookeville Broadcasting Co.*, FCC 60–101, 19 RR 987. Sadow's reliance on *LaFiesta Broadcasting Co.*, 64R–571, 3 RR 2d 996, is unavailing, because interrogatories there were made pursuant to a specific programming issue. This case contains a limited *comparative* programming issue, but not a 307(b) programming issue and Sadow did not request enlargement to add one.

APPENDIX

Rulings on Exceptions of Jay Sadow

Exception No.	*Ruling*
1	Granted. See note 2 of this Decision.
2	Denied. The Presiding Judge's findings adequately and accurately reflect the record. See paragraph 6 of this Decision.
3	Denied. (1) Rock City's Exhibit 4, p. 1, upon which Sadow relies, points out that the $7,000 in depreciation allowance will be available cash under the "Interest, Depreciation, Lease" listing; (2) for the reasons stated in paragraph 7 of this Decision.
4	Denied. The Presiding Judge's findings adequately reflect the record evidence and the additional material is without decisional significance. See paragraph 13 of this Decision.
5	Granted in substance. Sadow is apparently excepting to the Presiding Judge's failure to include the $4,100 cost of detuning water tanks in Rock City's first-year costs. We have included this figure and distributed a $30,360 net deferred equipment credit in arriving at Rock City's net first-year costs of $203,740. See paragraph 2 of this Decision.
6	Denied for the reasons stated in paragraphs 6 and 10 of this Decision.
7	Denied. (1) Rock City is not relying upon assets listed in its balance sheet to meet first-year costs but upon its $220,000 bank loan; (2) for the reasons stated in paragraph 7 of this Decision.
8	Denied. The 307(b) issue in this proceeding is directed solely to the application of Jay Sadow and its proposal would bring additional service to areas which are already well served. See paragraph 12 of this Decision.
9, 10	Denied for the reasons stated in paragraphs 12–13 of this Decision.
11	Denied for the reasons stated in note 11 of this Decision.
12	Denied for the reasons stated in paragraph 5 of this Decision.

F.C.C. 71D-85

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of JAY SADOW (WRIP), CHATTANOOGA, TENN.	Docket No. 18901 File No. BP-17792
ROCK CITY BROADCASTING, INC., CHATTANOOGA, TENN.	Docket No. 18902 File No. BP-17993
For Construction Permits	

APPEARANCES

Martin E. Firestone, *Martin Blumenthal* and *Michael Finkelstein* on behalf of Jay Sadow: *Morton L. Berfield*, *Edward Wholl* and *Lewis I. Cohen* on behalf of Rock City Broadcasting, Inc.; and *Philip V. Permut*, *Charles A. Zielinski* and *William D. Silva* on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER CHESTER F. NAUMOWICZ, JR.

(Issued November 5, 1971; Released November 9, 1971)

PRELIMINARY STATEMENT

1. By Commission Order released July 9, 1970, and Review Board Orders released October 27, 1970 and April 9, 1971, the above-captioned applications were consolidated for hearing on the following issues: [1]

1. To determine the efforts made by Jay Sadow to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

2. To determine whether the applicants are financially qualified to construct and operate their proposed stations.

3. To determine whether the proposed directional antenna parameters accurately depict the proposed radiation pattern of Rock City Broadcasting, Inc. during critical hours of operation.

4. To determine whether the aerial photographs, the ground plat, the quadrangular map and the geographical coordinates contained in the Rock City Broadcasting, Inc. application accurately depict the location of its proposed antenna site.

5. To determine whether the transmitter site proposed by Rock City Broadcasting, Inc. is satisfactory with particular regard to any conditions which may exist in the vicinity of the antenna system which would distort the proposed antenna radiation patterns.

[1] For convenience, certain of the issues have been renumbered.

6. To determine whether the above proposals would meet the city coverage requirements of Section 73.188(b)(2) of the Commission's rules, and, if not, whether circumstances exist which would warrant a waiver of said section.

7. To determine the areas and populations which would receive primary service from Rock City Broadcasting, Inc., and the availability of other primary aural service (1 mv/m or greater in the case of FM) to such areas and populations.

8. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WRIP and the availability of other primary aural service to such areas and populations.

9. To determine in the light of Section 307(b) of the Communications Act of 1934, as amended, whether the proposed operation of Station WRIP would provide a fair, efficient, and equitable distribution of radio service.

10. To determine which of the proposals would on a comparative basis, better serve the public interest.

11. To determine, on a comparative basis, whether a greater need exists for the religious-oriented program service proposed by Jay Sadow (WRIP) or for the news-public affairs program service proposed by Rock City Broadcasting, Inc.

12. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if either, of the applications should be granted.

2. The applicants published notice of the hearing and notified the Commission thereof pursuant to the governing statute and rules. Conferences and hearings were held on various dates between August 17, 1970 and September 10, 1971 with the record being closed on the later date. The filing of Proposed and Reply findings of fact was concluded by November 3, 1971.

Findings of Fact

Issue No. 1: Sadow's Community Needs Survey Activities

3. Sadow conducted community leader surveys in 1967, February and March, 1970, and May, 1971. In 1967 51 community leaders were contacted. Col. Sadow, relying on his long residence in the area, broke down his contacts among individuals representing governmental, educational, religious, charitable, entertainment, professional and business groups.

4. In 1970, using demographic material available in 1960 census data, an additional 109 persons were contacted. The survey, which included both personal and telephonic interviews, was conducted by Col. and Mrs. Sadow, Mr. Ronnie Currey, the Chief Announcer at WRIP, Miss Georgia Watts, the station's office manager, Mr. Mickey Ryon, a WRIP engineer, and Mrs. Theresa Arnold who is a longtime employee of the Sadows. The individuals contacted represented governmental, educational, minority, religious, charitable, entertainment, professional, business, agricultural, labor and general audience groups.

Their residence was broken down: 52 in Chattanooga; 24 in other Tennessee localities, 20 in Georgia and 13 in Alabama.

5. In 1971 Col. and Mrs. Sadow, and Susan Mashburn, WRIP Office Manager, contacted 63 additional people. Their places of residence included 27 in Chattanooga; 27 in other Tennessee localities; 6 in Georgia; and 3 in Alabama. They represented governmental, religious, educational, business, labor, professional, agricultural, entertainment, charitable and general audience groups.

6. The surveys disclosed opinions that local needs include governmental reorganization, pollution control, urban redevelopment, crime control, development of programs to deal with problems peculiar to the younger and older segments of the community, spiritual and religious development, etc. To deal with these problems Sadow proposes a panel discussion program for the Chattanooga Area Regional Council of Governments; monthly 30-minute programs dealing with youth and crime; weekly programs for the Georgia Game and Fish Commission, and the Tennessee Education Association; and extensive religious programs. Time will also be made available to various conservation organizations, as well as health education and welfare groups and charitable organizations.

ISSUE NO. 2: FINANCIAL QUALIFICATIONS

7. Sadow will require a total of $208,400 to construct and operate his proposed station for one year.[2] Of this, $170,175 will be required in assets available at or before the end of the first year of operation.[3] However, because of the assets on which Sadow has chosen to rely another item must be considered. As noted at paragraph 8, *infra*, Sadow looks to revenue to be generated by the operation of WRIP–AM and FM. Since the record shows the revenue history of the two stations as a total, rather than breaking out the revenues attributable to the AM station only, total revenues cannot be considered unless total costs are considered. The record indicates that the 1970 cost of operating the two stations was $148,000, and Sadow estimates that his proposed modification of the AM facility will add $2,000 to the cost of operation. Thus, the total cost of first year operation to be considered is $150,000, not $100,000 for the AM station alone, and the total assets required in the first year are $220,175, not $170,175.

8. The assets on which Sadow relies include $37,500 in cash, life insurance cash value of $1,500; $18,890 value of mutual fund shares; $2,600 value of over/counter stock; $480,000 in WRIP accounts receivable;[4] and operating revenues to be generated by WRIP–AM and FM.[5] Sadow showed additional fixed assets, but did not indicate how these might be employed to meet his financial requirements.

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[2] Transmitter, $25,000; antenna system, $55,000; building, $3,000; test equipment, $400; engineering, etc., $25,000; cost of operation, $100,000.

[3] Equipment down payment, $20,000; building, $3,000; 2 pre-operation installment payments on equipment, $2,950; other construction costs, $25,000; operation, $100,000; and 12 equipment installment payments, $19,175.

[4] WRIP accounts receivable have a history of being paid off at the approximate rate of $15,000 per month.

[5] WRIP's recent revenue and (profit) record has been: 1967, $122,382 ($21,634); 1968, $141,540 ($26,515); 1969, $170,387 ($31,237); 1970, $182,160 ($34,150).

9. Rock City will require a total of $230,000 to construct its station and operate it for one year.[6] To meet these costs it relies on an equipment credit of $30,360 and a bank loan of $220,000.

10. Rock City's balance sheet of October 30, 1971 shows current liabilities including notes payable of $82,338. While $22,338 is owed to Rock City's parent corporation, $60,000 is owed on a 90-day note to the bank which is to make the $220,000 loan noted at par. 9, *supra*,[7] and was taken out in connection with Rock City's acquisition of its FM station. Rock City established that its relationship with the bank is most cordial, that the outstanding note has been renewed every 90 days as a matter of course at either increased or decreased sums, depending on the convenience of Rock City's parent corporation, and that it intends to devote the proceeds of the prospective $220,000 loan exclusively to its proposed AM station. Moreover, the bank's commitment letter makes it clear that the prospective $220,000 loan is in addition to the outstanding $60,000 loan.

ISSUE NO. 3: DIRECTIONAL ANTENNA PARAMETERS OF ROCK CITY

11. On September 2, 1970, the Examiner accepted an amendment changing the current ratios of towers one and two of the Rock City proposal. As a result of the change the pattern shape and contours are those specified in Rock City's original application.

ISSUE NO. 4: LOCATION OF ROCK CITY ANTENNA SITE

12. Rock City recomputed its site location using a plat supplied by the land owners, known landmarks, and United States topographic maps. The recheck verified that the transmitter site location shown in the application is correct.

ISSUE NO. 5: SITE SUITABILITY

13. There are three water tanks in the vicinity of the Rock City transmitter site, two of which might act as significant reradiators. In the uncontradicted opinion of Rock City's consulting engineer, whose professional qualifications are unchallenged, conventional techniques will detune these structures enough to permit the pattern to be adjusted within the MEOV's both daytime and during critical hours. The total cost of detuning would be $4,100, and the owners of the towers have given their consent to the project.

ISSUE NO. 6: RULE 73.188(B)(2)

14. Sadow would provide a 5 mv/m or greater signal to 97.86% of the population and 91.63% of the area of Chattanooga. A total of 2,809 Chattanooga residents in 3.35 sq. mi. would be outside the 5 mv/m contour, but this area would receive a signal of at least 2.8 mv/m.

[6] Buildings, $30,000; equipment, $47,610; legal, engineering, installation and miscellaneous, $11,000; installment payments, $21,390; operating cost, $120,000.

[7] The note to which the record speaks has long since fallen due. The record has not been updated to show what disposition was actually made of it. If the Examiner had any real doubt as to Rock City's financial qualifications, he would regard this fact as decisionally significant.

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Sadow's transmitter site is located 4.5 miles north of Chattanooga, and was selected as being the best available. Other sites from which full compliance with the rule might have been obtained were ruled out because of excessively rugged terrain, because they were unavailable, because they would be too close to an airport or a power complex, or because they would not permit protection of existing stations.

15. Rock City's proposed site is 0.6 miles north of Chattanooga. However, the necessity to protect Station KGKA, Atlanta, Georgia results in patterns whereby small areas of the city lie outside the 5 mv/m contour. During daytime hours 99.07% of the population and 97% of the area of the city would lie within the 5 mv/m contour, but 1,229 persons in 1.2 sq. mi. would be without that contour. However, this area would receive a signal of at least 4 mv/m. During critical hours 99.62% of the population residing in 97.3% of the city's area would be within the 5 mv/m contour, but 504 persons in 1.1 sq. mi. would be outside the 5 mv/m contour. However, this area would receive a signal of at least 2.7 mv/m.

ISSUES NO. 7 AND 8: AREAS AND POPULATIONS

16. Rock City, which proposes a Chattanooga, Tennessee Station on 1190 kc, 10 kw, directional, daytime, would provide the following service:

Contour	Population	Area
Daytime:		
2 mv/m	321,430	1,060
0.5 mv/m	406,833	3,580
Critical hours:		
2 mv/m	274,725	785
0.5 mv/m	365,183	2,930

During daytime hours between 4 and 17 other AM services are available throughout the proposed service area, and during critical hours between 3 and 17 such services are available. During daytime hours 2,486 persons in 35 sq. mi. receive only 4 other AM services. During critical hours 389 persons in 15 sq. mi. receive only 3 other AM services, and 756 persons in 29 sq. mi. receive only 4 other such services. If FM services are also considered, all rural areas have at least 5 other aural services at all times, and all urban areas have at least 7 such services available.

17. Sadow's Station WRIP is presently located in Rossville, Georgia (pop. 3,869), a community adjacent to the southern boundary of Chattanooga, Tennessee (population 119,082). He operates on 980 kc, 500w, directional, daytime. Rossville has no broadcast stations other than WRIP–AM and FM. Chattanooga, to which he proposes to move on 1190 kc, 50 kw, directional, daytime, has 6 AM, 5 FM and 5 TV stations. The proposed change in the facilities of WRIP would result as follows:

Contour	Present		Proposed	
	Population	Area (sq. mi.)	Population	Area (sq. mi.)
0.5 mv/m	299,500	1,240	478,900	5,640
Interference-free	299,150	1,216	478,900	5,640
Gain			181,540	4,487
Loss			1,790	63
Net gain			179,750	4,424

Between 2 and 17 other AM services are available throughout the gain area. The area receiving only 2 AM services includes 227 persons in 19 sq. mi.; the area receiving 3 such services includes 923 persons in 48 sq. mi.; and the area receiving four such services includes 3,665 persons in 132 sq. mi. If FM services are included between 3 and 23 aural services are now available throughout the gain area. The area receiving 3 such services includes 284 persons in 18 sq. mi., and the area now receiving only 4 aural services contains 749 persons in 24 sq. mi. Within the loss area a minimum of 7 AM and 13 aural services are available.

18. However, one additional element of loss must be considered. WRIP's present allocation permits operation commencing at 6:00 a.m. local time, but its proposed facilities would not be allowed pre-sunrise operation. As a result, the station's signal would be lost to those now being served during the following periods:

Month	Hours lost each day	Percent of broadcast day lost	Month	Hours lost each day	Percent of broadcast day lost
January	1.75	14.9	July	.50	3.3
February	1.50	12.0	August	1.00	6.9
March	1.00	7.9	September	1.50	10.9
April	.25	1.9	October	1.75	13.2
May	.75	5.2	November	1.15	10.9
June	.50	3.3	December	1.75	15.4

ISSUE NO. 9:307(B)

19. As heretofore noted, Rossville, Georgia, where WRIP is now located, adjoins the southern boundary of Chattanooga, Tennessee, where Sadow proposes to move it. Rossville is in Walker County (population 50,691). Chattanooga is the seat of Hamilton County (population 254,236), and the central city of the Chattanooga Standard Metropolitan Statistical Area comprised of Hamilton and Walker Counties.

20. Rossville contains an area of 1.53 sq. mi. Its business district is a continuation of a commercial development within Chattanooga, and its businessmen participate in the Greater Chattanooga Chamber of Commerce. Rossville does not have separate electrical, gas, water, or sewage facilities, nor does it have its own newspaper. However, it does elect a Mayor and Commissioners, and has its own police force and volunteer fire department. Political and governmental activities

are, of course, conducted by the State of Georgia or its subdivisions rather than by Chattanooga or other Tennessee entities. Rossville runs its own parks and recreational facilities, has two banks unaffiliated with those in Chattanooga, and contains several industrial plants. The Rossville government participates in the Chattanooga Area Regional Council of Governments, a group formed to foster cooperation and coordination among members with respect to matters regional in scope.

21. The advertising pattern of WRIP suggests that the station has more than local appeal. During the period January–October, 1970, the source of the station's commercial spot announcements was: national, 9.6%; regional, 69.9%; Chattanooga, 16.3%; and Rossville, 4.4%. If the station is moved it will continue to provide a city grade signal over all of Rossville. The proposed program schedule contemplates continuation of the local Rossville programs currently broadcast and a local inter-connection would be established between the proposed AM studios and the FM studios which would remain at the present Rossville AM–FM location. The station would continue to carry Rossville PSA's on the same basis as they are presently broadcast.

ISSUE NO. 10: COMPARATIVE

22. Station WRIP is licensed to Col. Jay Sadow as a sole proprietor. He has been and will continue to be the full-time chief executive of the station. His wife also devotes her full time to the management of the broadcast operation. In addition to WRIP–AM, Col. Sadow is the licensee of WRIP–FM in Rossville, and owner of WRIP, Inc., permittee of WRIP–TV, Chattanooga, Tennessee, a station which is nearing the completion of construction. Col. and Mrs. Sadow have devoted their attention to broadcasting since they put WRIP on the air in 1958, and each has displayed a pattern of active participation in local civic, cultural, business and religious organizations.

23. Rock City Broadcasting, Inc. is a wholly owned subsidiary of Rock City Gardens, Inc. The principals of these corporations are:

Rock City Broadcasting, Inc.	*Rock City Gardens, Inc.*
E. Y. Chapin III	President, Treasurer, Director
E. Y. Chapin IV	Vice President and Director.
E. Y. Chapin Jr.	Director
Anna Powers	Secretary, Director and 21.2 percent stockholder.
Don Gault	Director and 10.6 percent stockholder.

Rock City Broadcasting, Inc. is the licensee of Station WLOM–FM, Chattanooga, Tennessee. Neither the corporations nor their principals have any other broadcast interests.

24. E. Y. Chapin IV would be general manager of the proposed station devoting his full time thereto. His father, E. Y. Chapin III plans to devote 10–20 hours a week to the station during its construction and initial period of operation, and he would remain in daily consultation with his son. However, the record does not define the precise duties he would undertake other than the acceptance of joint responsibility with his son for "basic decisions".

25. Both father and son are active in community organizations in the Chattanooga area. For the past three years the younger Chapin has served as General Manager of Station WLOM–FM. No other Rock City principal plans to participate in the operation of the proposed station.

ISSUE NO. 11: COMPARATIVE PROGRAMMING

26. Sadow's community surveys revealed that many area residents are interested in religious activities. From such interest he inferred a need for religious programs, both in the sense of programs dealing with religious concepts and practices, and in the sense of the application of religious principals to contemporary problems. WRIP is now the only station in the Chattanooga area with a primarily religious format, and it proposes, in essence, to continue its existing programming emphasis. However, the record indicates that other stations in the area do carry varying amounts of religious programs, and there is no reason to believe that will not continue to do so.

27. Rock City's surveys, on the other hand, disclosed an interest in and reliance on radio for news dissemination, and for discussion of community problems. Since no other station in the Chattanooga area has a basically news and public affairs format, Rock City devised a format which emphasizes such programming. Fundamentally, it involves twenty minute cycles during morning and evening drive time, each cycle consisting of four minutes of national news, four minutes of regional news, four minutes of local news, four minutes of public affairs, and four minutes of features and PSA's. During other parts of the day and on weekends when audience turnover is less rapid, the segments would be of 15 minute duration, and religious and sports programs would be introduced.

Conclusions

ISSUE NO. 1: SADOW'S COMMUNITY NEEDS SURVEY ACTIVITIES

28. Both the number of persons and their group identification included in the Sadow surveys indicate that he has obtained the views of a representative cross-section of the population he proposes to serve. His survey techniques were in substantial compliance with the governing Commission pronouncements. His programming seems reasonably designed to meet the needs he believes that his surveys reveal. While Rock City suggests that his failure to materially change his programming proposal demonstrates that his programming was predetermined and unaffected by his surveys, the Examiner is unable to reach any such conclusion. Col. Sadow, based on long residence in the area and experience as a local broadcaster, believed that a need existed for a station oriented toward religion. His surveys, in his reasonable opinion, confirmed that belief. Under such circumstances, his failure

to materially alter his programming proposal warrants no adverse inference.

ISSUE NO. 2: FINANCIAL QUALIFICATIONS

29. Sadow will need $220,175 to construct his modified AM facilities and to operate the AM and FM stations for a year. The combined operation has over the last four years, presented a picture of steadily increasing revenues and profits. Since the modified AM operation would continue to provide service to substantially all of the population now served, it is reasonable to assume that revenues will not diminish.[8] Therefore, crediting Sadow with the $182,160 in revenues generated in 1970, he will need approximately $38,000 in other assets to finance his proposal. His cash and life insurance cash value alone exceed that sum without affording consideration to his other liquid or easily liquifiable assets.

30. Rock City will need $230,000 to build and operate its proposed station for a year. It relies upon an equipment credit of $30,000, and a bank loan of $220,000. This reliance appears to be well placed. Although the applicant already owes $60,000 to the bank which is proposed as the source of the $220,000 loan, the bank's commitment is for an additional $220,000. This is tantamount to a statement by the bank that it will not look to the new loan as a source of repayment on the old note, and that the entire proceeds of the new loan will be available for the proposed AM station. It is concluded that each applicant has demonstrated adequate financial qualifications.

ISSUES NO. 3–5: ENGINEERING

31. Rock City has demonstrated that its antenna pattern will be as specified in its application, and that the transmitter site shown in its application is correct. While there are water tanks in the vicinity of the Rock City site which might cause reradiation, they can be detuned. The cost would not materially affect the applicant's financial qualifications, and the owners of the structures have consented to detuning.

ISSUE NO. 6: RULE 73.188(B)(2)

32. Sadow would provide a 5 mv/m or greater signal to over 97% of the population and 91% of the area of Chattanooga. Rock City would provide such a signal to over 99% of the population and 97% of the area of the city. Each is inhibited from providing full coverage by terrain, protection and land availability problems. Under such circumstances it is concluded that both applicants are in substantial compliance with the rule, *Broadcasting, Inc.*, 17 RR 2d 1117.

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[8] Very substantial new populations will be served by the operation as proposed, but hours of operation will be somewhat reduced. The record contains no reasoned projections as to the probable consequences of these two facts, but it seems probable that they will tend to offset each other. That is to say, a larger potential audience will probably result in a larger actual audience justifying higher advertising rates. However, with a shorter broadcast day there will be fewer advertising availabilities to sell.

ISSUES NO. 7, 8 AND 9: AREAS AND POPULATIONS AND 307(B)

33. Rock City would bring a new service to substantially greater populations than would Sadow. Moreover, Sadow's proposal would result in a total loss of service to a small number of persons (1,790), and part time loss of service ranging, depending upon the time of year, from 15 minutes to 1 hour and 45 minutes daily to all the population now served. Hence, it is concluded that Rock City's proposal represents a more efficient allocation of the frequency in terms of the greatest net gain of service to the greatest number of persons. However, virtually all of the populations involved receive an abundance of other services, and the weight to be accorded this preference is materially reduced.

34. In meeting the issue as to the 307(b) implications of moving his station from Rossville to Chattanooga Sadow notes that Rossville would not lose a reception service since his proposal would continue to provide a city grade signal over the community. Moreover, he contends the city would not lose a transmission service because he has committed himself to continue to offer the same Rossville oriented programming he has in the past, and to supply an interconnection from the FM studios which would remain located in Rossville. However, these arguments fly in the face of many of years of Commission precedent.

35. Since its inception the Commission has encouraged the establishment and maintenance of broadcast service in as many of the nation's communities as possible. This policy has been based on the assumption that each community has its own interests and problems to which a local station can direct its attention.[9] Subsidiary policies have been established to enhance the likelihood that local stations will actually meet local needs. If Sadow is permitted to move his station to Chattanooga, the thrust of all of the Commission's policies will compel him to serve Chattanooga with service to Rossville being relegated to a secondary status. Thus, no matter how good Sadow's intentions, Rossville will, in fact, have lost its only AM transmission service. Since no overriding needs of Chattanooga for Sadow's proposed service has been shown,[10] it is concluded that the objectives of Section 307(b) would be disserved by a grant of Sadow's instant application.

ISSUES NO. 10 AND 11: COMPARATIVE

36. An adverse conclusion on the 307(b) issue having been reached with respect to the Sadow application, the comparative issues have become moot and no conclusions thereon will be formulated.

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[9] Sadow's proposed findings seem to imply that Rossville may not actually be a separate community relative to Chattanooga. The Examiner is unable to adopt this view. Not only does the city have all the municipal indicia, and more, of population centers which the Commission has held in other hearings to constitute communities within the contemplation of Section 307(b), Sadow himself has repeatedly asserted that Rossville is a separate community by the filing of his various applications for WRIP–AM and FM at that locality.

[10] Sadow's proposed findings suggest that Section 307(b) should be applied to his application as if it were to be a regional or metro station. However, the application has been filed and prosecuted as one for the city of Chattanooga, and it is on that basis that it must be judged.

Summary

37. Each of the applicants has been found to have met the issues going to basic qualifications. However, it has been concluded that Sadow's proposal to transform Rossville's only standard broadcast station into a Chattanooga station is contrary to the intention of Section 307(b) of the Communications Act. Thus, Sadow's application must be denied, and there is no further barrier to a grant of the Rock City application. Rock City having been found to be fully qualified, the public interest would be served by a grant of the application.

Accordingly, IT IS ORDERED, That, unless an appeal is taken to the Commission by a party or the Commission reviews the Initial Decision on its own motion pursuant to Rule 1.276, the application of Jay Sadow IS DENIED, and the application of Rock City Broadcasting, Inc. IS GRANTED.

Chester F. Naumowicz, Jr.,
Hearing Examiner,
Federal Communications Commission.

F.C.C. 73-157

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of: TELEMUNDO, INC. (W22AB), MAYAGUEZ, P.R. For Construction Permit for New UHF Television Translator Station	File No. BPTT-2452

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 13, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. The Commission has before it for consideration the above-captioned application of Telemundo, Inc., licensee of television station WKAQ-TV, channel 2, San Juan, Puerto Rico, for a construction permit for a new 1,000-watt UHF television broadcast translator station to serve Mayaguez, Puerto Rico, by rebroadcasting station WKAQ-TV on output channel 22, which is listed in the Television Table of Assignments (section 73.606(b) of the rules). The Commission also has before it for consideration a petition to deny, filed December 6, 1972, by Video Empresas Del Oeste, Inc., permittee of newly authorized UHF station WVEO, channel 44, Aguadilla, Puerto Rico; a petition to deny, filed December 7, 1972, by Quality Telecasting Corporation, licensee of station WORA-TV, channel 5, Mayaguez, Puerto Rico; and various pleadings filed in connection therewith.[1] The petition to deny filed by Video Empresas Del Oeste, Inc. (VEO), is not supported by an affidavit of a person with personal knowledge of the facts alleged therein, as required by section 309(d)(1) of the Communications Act of 1934, as amended, and it is not, therefore, acceptable as a statutory petition to deny. Since we are considering this matter on its merits in any event, we will accept the petition as an informal objection filed pursuant to section 1.587 of the Commission's rules.

2. Quality Telecasting Corporation (Quality) claims standing as a party in interest within the meaning of section 309(d) of the Communications Act on the basis that it will compete in Mayaguez for viewership with the proposed translator station and will suffer economic injury. We find that petitioner has standing. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693, 9 RR 2008.

3. The applicant is presently operating a 100-watt UHF translator in Mayaguez pursuant to Special Temporary Authority granted by the Commission on November 15, 1972 (*Telemundo, Inc.*, FCC 72-1023, released November 21, 1972), reconsideration denied, FCC 73-61, released January 24, 1973. The background and history of this proceed-

[1] On December 21, 1972, the applicant filed separate oppositions to the petitions to deny and Quality Telecasting filed its reply thereto on January 4, 1973.

ing are set forth in the two cited prior decisions and in an order in this same proceeding (FCC–1109, released December 14, 1972) in which we denied a stay of our grant of STA. We will not, therefore, repeat the circumstances leading to our authorization of station W22AB on a temporary basis.

4. Station WVEO was authorized to VEO in September 1972, to operate on channel 44 in Aguadilla, but it has not yet been constructed and, to our knowledge, construction has not yet commenced. VEO's objections are based on its fear that the translator will make it impossible for the fledgling UHF television station to survive and compete. It also contends that the applicant has not shown a need for the proposed translator. At the outset, we note that the proposed translator will serve Mayaguez, but not Aguadilla. The proposal entails a highly directionalized antenna oriented at 142 degrees true, toward Mayaguez and away from Aguadilla, with effective radiated visual power of slightly more than 33 kW. Aguadilla is approximately 15 miles north of Mayaguez and, under these conditions, it is virtually impossible for the translator's signals to be received in Aguadilla. Mayaguez is within the predicted principal city contour of station WVEO. With respect to the question of need for the translator, VEO has misconstrued the thrust of *Doubleday Broadcasting Company, Inc.*, 25 FCC 2d 871, 20 RR 2d 467, and *Newhouse Broadcasting Corp.*, 8 FCC 2d 1122, 10 RR 2d 937, which the objector cites for the proposition that "when local stations object to applications for translators in their service areas, the burden is on the applicant to show a need for the proposed translators." This is not the teaching of the cited cases, but rather that the objector has an affirmative obligation to make at least a *prima facie* showing of lack of need before the burden to show need is placed upon the applicant. VEO has made no such showing. VEO has not shown how operation of the translator station will injure the public interest, even assuming that there might be some economic injury to station WVEO. The objections will be denied.

5. In considering Quality's petition to deny as well as VEO's objections, we wish to emphasize that we are mindful of the fact that, with the exception of a period of approximately one year in 1970, WKAQ–TV's programming was provided to Mayaguez through diverse means for 15 years and it is, therefore, a continuation of an existing service which we are considering and not the introduction of a new service. VEO's argument of economic injury loses much of its luster when viewed in the light of the fact that it applied for a construction permit for its Aguadilla station and asserted financial ability to build and operate for a year in the face of the existence of WKAQ–TV's programming being carried in Mayaguez by station WMGZ–TV. WMGZ–TV looked to local advertising revenues for at least some financial support; the translator will not. Moreover, the area which will be served by the translator within station WVEO's predicted Grade B contour will be substantially less than that served by station WMGZ–TV. The translator is to operate on a channel which is listed in the Television Table of Assignments (section 73.606(b) of the rules) for use by a regular television station and the translator's role, therefore, is secondary to that of any television station which we may subsequently authorize to operate on channel 22 in Mayaguez. The

translator, in other words, can be "bumped". This was not true with respect to station WMGZ–TV. For all of these reasons, it seems to us that the translator represents a reduction of potential adverse economic impact rather than an aggravation.

6. Because of the fact that the translator proposal represents continuation of an existing service, we are not persuaded, as argued by Quality, that the translator is an interloper which will disrupt the traditional structure and arrangements for television service on Puerto Rico's west coast. Quality seems to concede that we are not confronted with a new service, for, in its petition to deny, it refers to the "* * * reintroduction of the signal of WKAQ–TV * * * into Mayaguez via the proposed Telemundo translator * * *." There is no claim that the translator will generate local advertising revenues nor that, by reason of the translator, Telemundo will solicit advertising beyond that which it would have solicited had the arrangements with station WMGZ–TV continued. Of major importance in our evaluation of Quality's pleadings is the fact that Quality states categorically that it does not plead a *Carroll* question;[1] Station WORA–TV is a profitable operation and petitioner has not shown that its profitability will be impaired, much less that the public interest would be adversely affected. It is well established that private economic injury to a station, absent concomitant injury to the public interest, is not a ground for denying an application for a new broadcast station. *Folkways Broadcasting Company, Inc.* v. *Federal Communications Commission*, 126 U.S. App. D.C. 123, 275 F 2d. 299, 8 RR 2d 2089.

7. Quality asserts that the translator would have an adverse impact on the new Aguadilla UHF station, but, as with VEO's own pleading, it has failed to support this assertion with specific allegations of fact. We hold, therefore, that the allegations of adverse impact on station WVEO do not warrant unfavorable action on the application. Petitioner claims that the Commission has, in other cases, refused to grant the application of a television station licensee for a new UHF translator to operate in the city of license of a new UHF television station and it cites *WBJA–TV, Inc.*, 14 FCC 2d 262, 13 RR 2d 1138, and *West Michigan Telecasters, Inc.*, 11 FCC 2d 549, 12 RR 2d 133, to support this position. The cited cases, however, make clear that the Commission was there concerned only with a situation where the proposed new UHF translator would duplicate the network programming proposed by the new UHF television station, thereby imperiling the prospects for the new UHF television station to obtain the network affiliation it was seeking. The cited cases are inapposite.

8. Petitioner alleges that grant of the translator application would result in a concentration of control of the means of mass communications by Telemundo. To support this contention, petitioner points to the fact that Telemundo and related companies own or control a standard radio station, an FM station, and a television station in San Juan, and publish *El Mundo*, a large daily newspaper of general circulation throughout the island. Telemundo also controls Telemundo CATV, Inc., franchisee of a cable television system in Ponce. Petitioner, however, has not shown how authorization of a translator in Mayaguez

[1] *Carroll Broadcasting Co.* v. *Federal Communications Commission*, 103 U.S. App. D.C. 346, 258 F 2d. 440, 17 RR 2066.

would result in a concentration of control or, in fact, cause any significant change in the *status quo* prior to the demise of station WMGZ–TV. Moreover, we think that this contention is irreconcilable with the generally agreed fact that the island is served with a multitude of radio signals of every nature.[3] In the area to be served by the translator, the signals of two VHF television stations can now be received and, when station WVEO is built, there will be a third television signal available. Aside from *El Mundo*, there are at least three daily newspapers of general circulation in the area, five standard radio stations, and four FM radio stations, all serving Mayaguez. Neither Telemundo nor its principals have any interest in any of these. We conclude that petitioner has not sustained its allegations with factual support.[4]

9. Finally, in our view, it would be the discontinuation of WKAQ–TV's programming service in Mayaguez which could cause injury to the public interest, and not the continuation of that service, for it is axiomatic that a curtailment of radio service is not in the public interest unless it is offset by concomitant factors. *Hall* v. *Federal Communications Commission*, 99 U.S. App. D.C. 86, 237 F 2d. 567, 14 RR 2009. No offsetting factors have been alleged and we find none. It is undisputed that the San Juan television stations, including WKAQ–TV, formulate their programming to meet the needs and interests of the entire island and, clearly, events transpiring in the Commonwealth's capital and government are of interest to Mayaguez as well as to the rest of the island. Nothing in the pleadings before us persuades us that grant of the application could adversely affect the public interest. We conclude, therefore, that the petitioner and the objector have raised no substantial or material questions of fact and we find that the applicant is qualified to construct, own and operate the proposed new station. We further find that a grant of the application, appropriately conditioned, would serve the public interest, convenience and necessity.[5]

Accordingly, IT IS ORDERED, That the petition to deny filed herein by Video Empresas Del Oeste, Inc., IS DISMISSED, and, considered as an informal objection filed pursuant to section 1.587 of the Commission's rules, IS DENIED.

IT IS FURTHER ORDERED, That the petition to deny filed herein by Quality Telecasting Corporation, IS DENIED, and the above-captioned application of Telemundo, Inc., IS GRANTED, in accordance with specifications to be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[3] In a letter dated September 10, 1970, to the Commission from Mr. Alfredo R. de Arellano, Jr., president of Quality Telecasting, Mr. de Arellano states that he believes "• • • we have more TV stations in 3,500 sq miles of territory, for 2,750,000 people than any other place in the world."

[4] Telemundo is in full compliance with the Commission's present multiple-ownership rules and, since translators are not counted as stations for the purposes of the multiple-ownership rules, this situation will be unaffected. Section 74.732(b) of the rules. Our review of the competitive situation on the island makes it obvious that there is no merit to petitioner's claim. See *Chuck Stone* v. *Federal Communications Commission*, — U.S. App. D.C. —, 466 F 2d. 316, 24 RR 2d 2105.

[5] Since no type-accepted equipment is available for 1,000-watt translators with an input from a translator microwave relay station, grant will be conditioned upon submission of data in accordance with section 74.750 of the rules, prior to licensing.

F.C.C. 73-189

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
TRI-COUNTY CABLE TELEVISION CO., INC., WENONA, ILL.	CAC-895 IL156
TRI-COUNTY CABLE TELEVISION CO., INC., TOLUCA, ILL.	CAC-896 IL157
TRI-COUNTY CABLE TELEVISION CO., INC., MINONK, ILL.	CAC-897 IL158
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 22, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON, H. REX LEE, AND WILEY CONCURRING IN THE RESULT; COMMISSIONER REID, ABSENT.

1. On July 25, 1972, Tri-County Cable Television Company, Incorporated filed the above-captioned applications for certificates of compliance for new 20 channel cable television systems to operate from a common headend at Wenona, Minonk, and Toluca, Illinois, in the Peoria, Illinois, television market (83d). Tri-County proposes to carry on each of its systems the following Illinois television signals: WRAU-TV (ABC), WEEK-TV (NBC), WMBD-TV (CBS), and WTVP (Educ.), Peoria; and WGN-TV (Ind.), and WFLD-TV (Ind.) both Chicago. On September 18, 1972, Midwest Television, Inc., licensee of Station WMBD-TV, Peoria, Illinois, filed an objection to Tri-County's applications, and Tri-County has replied.

2. In its objection, Midwest alleges: (a) that Tri-County's franchises are not consistent with Section 76.31 of the Commission's Rules since (1) there are no franchise recitations that they result from a full public proceeding, (2) there are no construction timetables, (3) they are for twenty-five years, (4) they make no provision for investigation and resolution of complaints, (5) no initial fee schedule is provided in the franchises, (6) there is no provision for incorporation of Commission standards in the franchises, (7) there are no franchise fees stated in the franchises; (b) that Tri-County makes too vague a statement regarding access availability; (c) that no statement is made concerning compliance with Equal Employment Opportunity requirements; and (d) that no statement is made guaranteeing Tri-County will provide network or syndicated program exclusivity.

3. We rule on Midwest's objections as follows: (a) Tri-County avers (1) that it received its franchises only after its qualifications were discussed at City Council meetings in each city; (2) that it will complete construction within one year of grant of the certificates; (3)

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that its franchises were granted prior to the adoption of the Commission's present rules and, therefore, are eligible for consideration under the substantial compliance test [1]; (4) that a local office has been established at Wenona and will handle complaints; (5) that the city councils have been given the initial rates and increases will be subject to their approval; (6) that Tri-County will accept any Commission modifications; and (7) that Tri-County does not have to pay any franchise fees to the cities. In these circumstances, we believe that there has been substantial compliance with our franchise standards sufficient to justifiy a grant until March 31, 1977. *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10; *LVO Cable of Shreveport-Bossier City*, FCC 72–954, 37 FCC 2d 1037. (b) In its reply, Tri-County sets forth its access channel plans in acceptable form.[2] E.g. *Viking Media Corporation*, FCC 72–875, 37 FCC 2d 605, 606. (c) Tri-County states it will employ fewer than five full-time employees and hence is not subject to the requirement. In addition, Tri-County has submitted an equal employment statement. (d) In its reply, Tri-County states it will comply with appropriate exclusivity requests.

In view of the foregoing, the Commission finds a grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection of Midwest Television, Inc. Pursuant to Section 76.27" filed September 8, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the applications for certificates of compliance (CAC–895, CAC–896, CAC–897) filed July 25, 1972, by Tri-County Cable Television Company, Incorporated, for Wenona, Toluca, Minonk, Illinois ARE GRANTED, and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[1] The Wenona franchise was granted July 7, 1971; the Minonk franchise was granted September 7, 1971; and the Toluca franchise was granted August 2, 1971.

[2] Only Minonk and Toluca are within Peoria's specified zone and therefore subject to access requirements.

F.C.C. 73-153

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of THE TWIN STATES BROADCASTING CO., ASSIGNOR and CSRA BROADCASTERS, INC., ASSIGNEE and THE WARNER GROUP, INC., ASSIGNEE For Assignment of License of Station WFNL, North Augusta, S.C. and WGAC, Augusta, Ga.	BAL-7596 and BAL-7597

FEBRUARY 7, 1973.

MR. GEORGE G. BEASLEY,
President, CSRA Broadcasters, Inc.,
Post Office Box 3286,
Augusta, Ga. 30904.

DEAR MR. BEASLEY: This is with reference to the applications (1) for assignment of the license of Station WGAC, Augusta, Georgia, from The Twin States Broadcasting Company to CSRA Broadcasters, Inc. (BAL-7596) and (2) for assignment of the license of Station WFNL, North Augusta, South Carolina, from CSRA Broadcasters, Inc. to The Warner Group, Inc. (BAL-7597).

In connection with its review of the above applications, the Commission considered the fact that the Complaints and Compliance Division of its Broadcast Bureau is currently conducting an investigation into possible licensee misconduct which may have occurred at Station WFMC, Goldsboro, North Carolina, which you control. The Commission also considered the cross-interest problem which would be raised by the fact that, as a result of the above applications, CSRA Broadcasters, Inc. would be licensee of WGAC and a creditor of the licensee of WFNL, which is in the same market. You have represented that the note which is to be received from The Warner Group, Inc. would be discounted to a disinterested, *bona fide* third party in order to obviate this problem.

In view of the above, please be advised that the Commission has granted the above applications: (1) subject to the outcome of the WFMC investigation and (2) on the condition that The Warner Group note be discounted prior to consummation of the WGAC application, BAL-7596.

Commissioner Johnson dissenting and issuing a statement. Commissioner H. Rex Lee absent.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

Today the Federal Communications Commission grants authority to CSRA Broadcasters, Inc., to rid itself of one standard broadcast station (WFNL, North Augusta, South Carolina) and to purchase another (WGAC, Augusta, Georgia). At least for purely pedagogical purposes, this is a beautifully illustrative decision: it demonstrates graphically—to broadcasters, scholars and legislators alike—how lawlessly this Commission can and does act. Because the majority makes an utter mockery of our rules and of our process, I dissent.

The majority recognizes that these assignments pose some problems. The majority's resolution of those problems raises serious questions. But the decision is probably most remarkable for what it completely ignores.

First, the majority approves CSRA Broadcasters' right to purchase a new AM radio station despite the fact that CSRA's principals currently own and control a sizeable number of other broadcast interests—all in the Southern portion of this country.

Mr. George G. Beasley currently owns a 55% interest in CSRA, the present licensee of WFNL. Beasley also owns majority interests in five other standard broadcast stations: WFMC, Goldsboro, North Carolina; WASC, Spartansburg, South Carolina; WMOO, Mobile, Alabama; WFAI, Fayetteville, North Carolina; and WANC, Henderson, North Carolina. He also owns a 35% interest in an additional AM station, WKGX, Lenoir, North Carolina; is majority owner of two FM stations, WFMC–FM and WHNC–FM; and has a 51% interest in a pending FM application for Mobile, Alabama. Including his ownership interest in WFNL, then, Mr. Beasley has substantial interests in seven AM stations, two FM's, and one potential FM station—all located in the same region of the country.

Mr. Sammy E. Floyd currently owns 10% of CSRA. He also owns a greater than 1% interest in four other AM stations, one FM station, and the pending Mobile FM application. (All of these stations are currently controlled by Mr. Beasley.) Mr. Edward J. McKeown, 10% owner of CSRA, also owns more than 1% of three AM stations and the pending Mobile FM application. Mr. D. E. Gwaltney, owner of 25% of CSRA, also owns well over 1% of two AM stations and 10% of the pending Mobile FM application. Mr. Beasley's wife, Shirley who is vice-president and director of CSRA, is also an officer in several of the stations owned by her husband, McKeown, Floyd, and Gwaltney.

In effect, then, the assignment the majority today approves will leave the owners of CSRA with well over a majority interest in seven AM stations, and two (and soon three) FM stations.[1] It might be observed, of course, that CSRA's principals already own this number of stations (if WFNL is included) and, hence, by replacing WFNL with WGAC, it could be argued that CSRA's principals are merely maintaining the status quo. However, that is not the case because

[1] It is, of course, conceivable that the Federal Communications Commission will refuse to approve the pending Mobile FM application. However, given today's decision, such a possibility seems—if not hilarious—at least highly unlikely.

WFNL is a 500 watt day time-only station serving the small North Augusta Community, while WGAC is a 5,000 watt, full time station serving the entire Augusta metropolis. As the majority itself concedes, WGAC "is a vastly superior facility to WFNL." Thus, by this assignment, the CSRA principals are obviously *increasing* their broadcast interests and influence.

Though the majority alludes to these ownership patterns, it does not even pause to note that such patterns raise very serious multiple ownership problems under our rules and decisions.

In order to prevent the growth of monolithic control over the nation's airwaves—and access to the minds of the audience—the Federal Communications Commission has promulgated rules which limit the number of television and radio stations which may be controlled by the same institutions or individuals. Thus, 47 C.F.R. § 73.35(b) bars an individual or institution from owning a greater than 1% interest in more than one AM station if such ownership would result in an "undue concentration of control" contrary to the public interest; 47 C.F.R. § 73.240(a)(2) applies the same prohibition to FM stations.

In determining whether the grant of a license will result in such an undue concentration of control, the rules require the Commission to consider "the facts of each case." But, in no event do these rules permit an individual or institution to own a greater than 1% interest in more than seven AM's and seven FM's.

As I have suggested on at least two prior occasions, *see* my dissenting opinions in *Application of Cosmos Broadcasting Co.*, — FCC 2d — (1972), and *Application of Muskegon Heights Broadcasting Co.*, — FCC 2d — (1973), the intent of these rules is clear: While the seven station limit is an absolute, or *per se*, maximum, acquisition of any additions to one AM or FM station obviously merits careful Commission scrutiny. Indeed, if the FCC is to consider the "facts of each case" as our rules clearly demand, a hearing might well be warranted in every case where an institution or individual seeks to acquire an additional AM or FM station. (The same rule applies to the acquisition of television stations. (See 47 C.F.R. § 73.636 and *Cosmos Broadcasting*, *supra*.)

As I have also suggested on prior occasions, even if such a hearing is not deemed necessary in the general case—for reasons which can only be termed politically expedient—a hearing is surely required where, as here, an acquisition results in increased *regional* concentration of control. *See Cosmos Broadcasting*, *supra; Muskegon Heights Broadcasting*, *supra*. *See also* my dissent in *Assignment of Station WNUL*, 21 RR 2d 77 (1971).

The majority does not allude to this problem of regional concentration.[2] Shockingly, the majority does not even recognize the broader

[2] It is important to distinguish between undue regional concentration and cross-ownership of overlapping stations. Both are prohibited by our rules, but in the former case an individual or institution owns or controls stations whose signals do not overlap but, nevertheless, cover the same general geographic region of the country. In the latter case, an individual or institution owns stations so close together that their signals overlap—thus reaching the same viewers or listeners. The majority notes that CSRA cannot own both WGAC and WFNL because such ownership would result in the sort of signal overlap precluded by our rules against cross-ownership. The majority, however, does not even speak to the related and equally serious problem of undue regional concentration.

problem of undue concentration posed by these assignments. It is one thing to recognize a problem and then to attempt to resolve it in a disingenuous fashion. It is quite another thing simply to ignore the problem. In the former case, our rules suffer from gross mis-reading—surely a serious difficulty. But in the latter case, our *process* suffers from cruel insult and from what can only be termed lawlessness.

The second problem raised by these assignments—and again completely ignored by the majority—lies in CSRA's efforts at ascertaining the needs of the Augusta community.

Before this Commission can grant an application to acquire a station's license, we must first find that such assignment serves the public interest, convenience and necessity. *See* § 309 of the Communications Act of 1934. And, in making this determination the Commission must find that the applicant has adequately ascertained the needs of its community. *See, e.g., Sioux Empire Broadcasting Co.*, 16 FCC 2d 995 (1969); *Application of City of Camden*, 18 FCC 2d 412 (1969); *Stone* v. *Federal Communications Commission*, 24 RR 2d 2105, — F. 2d — (D.C. Cir. 1972).

Based on CSRA's own demographic study, 50% of Augusta's population of 60,000 is black. In conducting its ascertainment of the general population, CSRA consulted with 160 individuals, 23 of whom were black. In other words, though 50% of Augusta is black, only 14% of those persons consulted from the general public were black. While the Commission has stated in its *Primer on Ascertainment* that "statistical accuracy is not required" in this area, 27 FCC 2d 650, 667 (1971), this does not mean that a licensee can virtually ignore significant groups in its community. *See Application of City of Camden, supra.* Indeed, our *Primer on Ascertainment* requires that the applicant consult with a random sample of its community, and the fact that CSRA consulted with so small a percentage of blacks in such a heavily black-populated city strongly suggests that the applicant's ascertainment study may not have been based upon a random sample.

The majority completely ignores this possible defect in the applicant's ascertainment study. Presumably, the majority is of the view that because no complaint has been officially leveled against this ascertainment survey, there is no reason for FCC exploration. However, as I have observed in the past, if this Commission is serious about injecting integrity into its own rules, it must accept the obligation of enforcing those rules on its own motion. *See, e.g.*, my dissent in *Application of the Meredith Corporation (WOW)*, —— FCC 2d —— (1972).

Here, however, the majority reveals that it has no intention of enforcing its own rules, and, in so doing, it robs those rules of their vitality. Not only does it sap its ascertainment requirements of their force, but it also flouts the law as set forth by the United States Court of Appeals by ignoring the problems inherent in CSRA's proposed format change for WGAC.

The assignee plans to change WGAC's format from contemporary, middle-of-the-road music to one of Country and Western combined with "standard pop" and some gospel music. Again, the majority makes nothing of this fact, presumably because it does not appear that

any citizens have objected. It is, of course, possible that the citizens of Augusta have not been apprised of CSRA's proposed format change. But, irrespective of the reasons for this lack of citizen objection, I believe that this Commission is under an obligation to investigate—on its own—proposed format changes in the context of license assignment proceedings.

In *Citizens Committee* v. *FCC*, 436 F. 2d 263 (D.C. Cir. 1970), the Court of Appeals reversed a Commission grant of an application for a transfer of WKGY–AM–FM in another Georgia city, Atlanta. In that case the Commission had granted the transfer application without a hearing on the question of the public interest impact of the proposed change of format from classical music to a "blending of popular favorites, broadway hits, musical standards, and light classical music." The Court of Appeals held, in substance, that the Commission could not make the necessary factual determinations from the record as developed without a hearing.

A hearing was ordered by the *Citizens* court at least in part to determine whether the licensee would, by changing its format, reduce the degree of programming diversity in the community. *See* my dissenting opinion in *Application of Zenith Radio Corp.*, —— FCC 2d —— (1972). Properly read, such diversity is the key to the *Citizens* decision; if the court were not concerned that the public interest would suffer from such a reduction in diversity, then it would not have been concerned with the Commission's failure to determine the salient facts.

In the instant case, the majority does not ask whether CSRA's proposed format change will decrease the diversity of programming in Augusta. It is at least possible that WGAC's contemporary music format was the only such format in Augusta, and that CSRA's proposed format is identical to the formats of most other stations in the community. It is, of course, equally possible that CSRA's proposed format will actually introduce greater diversity of programming into the Augusta area. The point is that the majority simply does not know and does not bother to inquire. By declining to make such an inquiry the majority ignores the command of the Court of Appeals.

As I have suggested, the majority's refusal even to recognize possible rule violations makes an utter mockery of our process. However, given the majority's treatment of those problems which it *does* perceive, the question whether it is worse to treat our rules disingenuously than it is to ignore them altogether is a close one.

What the majority *does* do is to first grant CSRA a waiver of our three-year rule. 47 C.F.R. § 1.597. That rule precludes a licensee from selling a station within three years of the date the licensee acquired that station. The purpose of the rule is to prevent licensees from "trafficking" in broadcast licenses, from obtaining licenses "for sale rather than for service." *Folkways Broadcasting Co. Inc.*, v. *FCC*, 375 F. 2d 299 (D.C. Cir. 1967). The presumption is that the licensee who sells a station within three years is trafficking, *Harriman Broadcasting Co.* v. *FCC*, 399 F. 2d 569 (D.C. Cir. 1968), and by such trafficking, the licensee serves personal profits over and above the public interest. *See*, *e.g.*, *Harriman Broadcasting Co.* (*WXXL*), 9 FCC 2d 731 (1967).

Section 1.597 therefore demands that this Commission designate for hearing all applications to assign station licenses prior to the expiration of the three-year limit. In the instant case, the majority not only resolves the trafficking question in the licensee's favor absent a hearing, but—more remarkably—it does so in the face of evidence strongly suggesting the presence of the very evil the three-year rule is designed to prevent.

The majority concedes that within the last couple of years CSRA's primary stockholder—Mr. George Beasley—has sold three of his broadcast interests, two of which were majority interests. However, the majority contends that these prior sales, when coupled with the instant sale and acquisition, do not present a trafficking issue because CSRA is merely attempting to improve its broadcast facilities in the Augusta area. Yet, the majority admits, at the same time, that CSRA will make a $90,000 profit through the sale of WFNL, and surely the majority must recognize that licensees do not achieve such instant profit through the mere improvement of facilities.

Indeed, this Commission has held that the sale of a station within three years of acquisition will not constitute trafficking *per se* where no profit is made, *Romac Baton Rouge Corp.*, 7 FCC 2d 564 (1967), thus suggesting that the existence of a profitable sale should indicate the likelihood of trafficking. The majority apparently attempts to dismiss that suggestion with the bizarre statement that CSRA will use the profits made on the WFNL sale to help purchase WGAC. I fail to see how that has any relevance at all.

To conclude from these facts—as the majority does—that Mr. Beasley "is a prudent broadcaster" is simply preposterous (unless one is speaking about Beasley's investment acumen). Only one conclusion is possible from these facts, and that is that Mr. Beasley and his colleagues have engaged in conduct (trafficking) which is *prima facie* inconsistent with the public interest. *See Folkways Broadcasting Co., supra; Harriman Broadcasting Co.* v. *FCC*, *supra.* In such circumstances, a hearing must be held under § 309 of the Communications Act of 1934 before the Commission may rule on this assignment. *Compare Stone* v. *FCC*, *supra.* For the majority to waive its three-year rule in these circumstances is—even to one who has witnessed a lot of FCC lawlessness—unbelievable.

The majority also grants these assignments despite the fact that CSRA's basic qualifications as a licensee currently are in grave doubt. CSRA's principals are the principals of, among other stations, WFMC in Goldsboro, North Carolina. WFMC currently is being investigated by this Commission to determine whether that station has over-commercialized and falsified its logs in order to conceal this fact from the FCC. The investigation is also exploring allegations that WFMC has engaged in double billing.

The majority admits that, while the investigation is not yet completed, "WFMC has in fact been logging its commercials at approximately 50% of time actually broadcast." In other words, the facts currently reveal that WFMC's principals have lied to this Commission. And, while the double billing analysis has not been completed, preliminary analysis reveals that WFMC has, indeed, engaged in such

unlawful conduct. The majority apparently wishes to reward such deception by permitting WFMC's principals to profit from the sale of one station (in violation of one rule) and to purchase yet another (in violation of another).

At this stage of the proceedings, with Mr. Beasley's qualifications as a licensee subject to such serious question, the majority's approval of these assignments raises major problems.

First, the majority asserts that because Mr. Beasley's alleged misconduct relates only to WFMC, that misconduct does not reflect upon Beasley's other broadcast holdings, and, hence, there is nothing wrong with allowing him either to profit from the sale of WFNL or to purchase a new, larger station. Such an assertion completely mis-states the law.

In *Friendly Broadcasting Co.*, 35 FCC 2d 84 (1972), the FCC refused to reconsider an earlier order designating two of Friendly's renewal applications for hearing. Friendly had applied to renew its licenses for WJMO (AM) and WLYT (FM), both in Cleveland, Ohio. The Commission ordered a hearing on Friendly's WJMO application because the licensee's qualifications with respect to that station were in serious question due to numerous alleged rule violations and charges of misrepresentation. The Commission also designated a hearing on the FM application, and Friendly argued that since no wrong-doing had been alleged against *that* station, no hearing should be held with respect to it.

The Commission unanimously disagreed with Friendly's argument. We held that, even if the allegations of misconduct related solely to WJMO, those allegations went to Friendly's basic qualifications as a licensee and thus went to its qualifications to hold *any* broadcast license, *See also Vinita Broadcasting Co.*, 30 FCC 2d 458 (1971), where the Commission denied one AM renewal application and declined to issue a construction permit to the licensee for still another station because the licensee's character qualifications had been found severely wanting with respect to a third, unrelated station.

Indeed, just two weeks ago this Commission voted to designate for hearing the renewal application of WOIC, Columbia, South Carolina, at least in part because the licensee's character qualifications had been drawn into serious question with respect to its operation of another, unrelated, station. *Application of WOIC, Inc.*, —— FCC 2d —— (1973).

How can this Commission designate a licensee's renewal application for hearing based on the licensee's alleged conduct with regard to another station at one meeting, and then, just two weeks later, deny that another licensee's conduct with respect to one of its stations is even relevant to that licensee's application to sell another station and to purchase an even larger one?

The two holdings cannot possibly be reconciled. At the very least, given *Friendly Broadcasting*, *Vinita Broadcasting*, and *WOIC, Inc.*, a hearing must be designated in the instant case before the Commission can determine whether CRSA should be allowed to *retain* the license to WFNL—let alone whether CRSA should be allowed to sell that

license at a substantial profit in return for the purchase of a superior broadcast facility.

The majority notes rather gratuitously that CSRA's acquisition of WGAS is granted subject to the outcome of the WFMC investigation. The majority does not state unequivocally—though this is the least it could do—that CSRA will have to divest itself of WGAC if the WFMC investigation proves adverse to that station's principals. Could this be because the majority has no intention of finding against WFMC no matter what the facts reveal?

But perhaps more serious is the fact that by granting today's assignment to CSRA, the majority has, in effect, made a "public interest" determination which cannot possibly be made on this record.

As I have noted earlier, section 309 of the Communications Act of 1934 requires that before we grant an application to purchase a station's license, we first determine that such a grant will serve the public interest, convenience and necessity. That determination cannot possibly be made where—as here—the proposed assignee's character qualifications are open to serious doubt. *See* my dissents in *Application of RKO General*, —— FCC 2d —— (1972), and *Application of Sumter Broadcasting*, —— FCC 2d —— (1973). And, as I have also suggested, the lawlessness of such a grant is by no means cured when that grant is made only conditionally. *See RKO*, *supra*, where I noted that such conditional grants tend to place the Commission in a decidedly non-neutral position in violation of the principles set forth by the Supreme Court in *Ashbacker Radio Co.* v. *FCC*, 326 U.S. 327 (1945).

I dissent because I believe the decision in this case is clearly erroneous. I write at such length because the majority's opinion illustrates so fully how bad things really are at the FCC. For those academicians, researchers and reformers who want another example, here it is.

F.C.C. 73R-82

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of THE U.S. DEPARTMENT OF DEFENSE, COMPLAINANT v. GENERAL TELEPHONE CO. OF THE NORTHWEST, GENERAL TELEPHONE CO. OF CALIFORNIA, GENERAL TELEPHONE CO. OF WISCONSIN, GENERAL TELEPHONE CO. OF FLORIDA, WEST COAST TELEPHONE CO. OF CALIFORNIA, ST. JOSEPH TELEPHONE & TELEGRAPH CO., UNITED TELEPHONE CO. OF THE NORTHWEST, NEVADA TELEPHONE-TELEGRAPH CO., DEFENDANTS AMERICAN TELEPHONE & TELEGRAPH CO., RESPONDENT	Docket No. 18536

MEMORANDUM OPINION AND ORDER

(Adopted February 21, 1973; Released February 23, 1973)

BY THE REVIEW BOARD: BERKEMEYER, PINCOCK, AND KESSLER.

1. On January 2, 1973, the Board released its Decision (38 FCC 2d 803, 26 RR 2d 245) in this proceeding affirming the Initial Decision of the Administrative Law Judge (38 FCC 2d 822). On January 26, 1973, the GTE defendants filed a motion for clarification of ruling,[1] requesting that we clarify our ruling on GTE exception number one.[2] In movant's view, "the ruling as it stands * * * is internally inconsistent, for if the GTE defendants were fully subject to the [Communications Act of 1934, as amended] they would be concurring rather than connecting carriers." The motion will be granted to the extent that the ruling in question is modified to read as follows:

> *Granted* to the extent that the General Telephone Companies of California, Florida and Wisconsin are connecting carriers; *denied* in all other respects since this question has been ruled on in paragraph 9 of the Commission's designation Order (22 FCC

[1] A response to the motion was filed on February 5, 1973, by the Secretary of Defense.
[2] The ruling reads as follows:
Granted to the extent that the GTE defendants are connecting carriers; *denied* in all other respects because all the GTE defendants are fully subject to the provisions of the Communications Act of 1934, as amended.

2d 70) and in our Decision. See also *GTE Service Corporation* v. *FCC*, 2d Cir., Cases Nos. 97, 185–188, February 1, 1973, Slip Opinion, pp. 1817–18.

2. Accordingly, it is ordered, That the motion for clarification of ruling, filed January 26, 1973, by the GTE defendants IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-131

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications for Renewal of License filed by UNITED TELEPHONE CO. OF OHIO For Radio Common Carrier Stations KQA459 and KQA651 in the Domestic Public Land Mobile Radio Service at Lima, Ohio, and Bellefontaine, Ohio	Docket No. 19072 Files Nos. 548-C2-R-70, 549-C2-R-70

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 5, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN PART AND DISSENTING IN PART; COMMISSIONERS REID AND WILEY CONCURRING IN THE RESULT.

1. The Commission has under consideration the Initial Decision, FCC 72D-16, of Administrative Law Judge Lenore Ehrig, exceptions thereto and supporting briefs, filed on April 6, 1972, by Carpenter Radio Company (Carpenter), Ohio Association of Radio Common Carriers (Association), and the Chief, Common Carrier Bureau (Bureau), and a reply, filed April 19, 1972, by United Telephone Company of Ohio (United). Carpenter, Association, and the Bureau have requested oral argument before the Commission, *en banc*.

2. The captioned renewal applications were designated for hearing in a Memorandum Opinion and Order, FCC 70-1154, released November 6, 1970, on issues which included *inter alia* the following:

> To determine whether United Telephone Company of Ohio, in connection with the rates charged to miscellaneous common carriers and to others for interconnection with the landline facilities of United, has engaged in any pricing practices which are:
>
> (a) anti-competitive or monopolistic;
>
> (b) in violation of any provision of the Communications Act or contrary to the public interest standards thereof;
>
> (c) in violation of any rule, decision, or policy of the Federal Communications Commission;
>
> and if so, whether the Commission should prescribe just and reasonable interconnection charges, and what such charges should be, pursuant to Section 201(a) of the Act, 47 U.S.C. Section 201(a).

In resolving the designated issue, the Presiding Judge misconstrued the scope of the issue and confined her deliberations to "whether

United is charging a premium for a line to connect a miscellaneous common carrier as distinct from ordinary business lines."

3. In our designation order we noted that Association alleged, *inter alia*, that United was discriminating in its charges to miscellaneous common carriers for interconnection as opposed to ordinary business lines. It was our intention, however, to consider United's interconnection pricing practices fully in order to assure that it was not engaged in any anti-competitive or monopolistic pricing practices. In the designation order we discussed at length our "concern for the possibilities of competitive abuse where wireline carriers compete with non-wireline carriers" (*Guardband Proceeding*, 12 FCC 2d 841 at 845 (1968), *recon. den.* 14 FCC 2d 296, *affirmed sub nom. Radio Relay, Inc.* v. *FCC*, 409 F 2d 322 (2d Cir., 1969)), and we stressed the "great significance we attach to competitive equality between wireline and non-wireline carriers." The guidelines we established in the *Guardband Proceeding* for pricing practices in competitive situations provided that authorizations would be granted on the condition that wireline carriers made their facilities available to competing non-wireline carriers at costs identical to those they use in computing their own costs for providing competitive services. Although the *Guardband Proceeding* is not directly applicable to the applications under consideration here, our discussion illustrated our concern with competition between United and competing non-wireline carriers which use its interconnection facilities. We did not contemplete the narrow framework within which the Presiding Judge interpreted Issue 2. It is incumbent upon United to establish the costs upon which its charges for interconnection are based and to have the burden of proving that the charges are reasonable and do not give United unwarranted competitive advantage. Under the Presiding Judge's interpretation of the issue, such evidence was not required for resolution of the issue. We are therefore unable to resolve the issue based on the evidence of record.

4. Accordingly, IT IS ORDERED, That the record IS REOPENED and that the proceeding IS REMANDED to the presiding Administrative Law Judge for further proceedings consistent with our opinion herein; and

5. IT IS FURTHER ORDERED; That such remanded proceedings be conducted on an EXPEDITED basis; and

6. IT IS FURTHER ORDERED, That the requests for oral argument filed by Carpenter Radio Company, Ohio Association of Radio Common Carriers, and the Chief, Common Carrier Bureau ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-84

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of VOICE OF REASON, INC. (KICM), GOLDEN, COLO. For Construction Permit	Docket No. 18710 File No. BP-18553

MEMORANDUM OPINION AND ORDER

(Adopted February 21, 1973; Released February 23, 1973)

BY THE REVIEW BOARD: BERKEMEYER, PINCOCK, AND KESSLER.

1. This proceeding involves the application of Voice of Reason, Inc. (KICM) (Voice of Reason) for authority to operate the former facilities of standard broadcast Station KICM, Golden, Colorado. In a decision, FCC 72R-299, 37 FCC 2d 686, 25 RR 2d 645, released October 20, 1972, the Review Board resolved unauthorized transfer of control, financial, misrepresentation, Rule 1.65 and *ex parte* issues adversely to Voice of Reason [1] and concluded that a grant of its application would not serve the public interest.[2] Now before the Board is a petition for reconsideration, filed November 20, 1972, by Voice of Reason,[3] wherein the applicant seeks a favorable determination of all of the specific issues. Petitioner's arguments as to each issue will be treated seriatim.

2. With respect to the unauthorized transfer of control issue, Voice of Reason contends that the Board's rejection of "substantial and uncontradicted evidence" upon which the Presiding Judge relied was "unlawful." That is, Voice of Reason argues, the Board has violated the substantial evidence doctrine and the principle set forth in *Office of United Church of Christ* v. *FCC*, —— U.S. App. D.C. ——, 425 F.2d 543, 16 RR 2d 2095 (1969), by rejecting evidence which was neither contradicted nor on its face incredible. Specifically, the applicant questions the Board's rejection of Voice of Reason's explanation that some $60,000 was borrowed by it for the purpose of placing the funds in an escrow account pending Commission approval of Voice of Reason's acquisition of KICM. Voice of Reason argues that uncontradicted evidence established that its president, Bill Beeny, and its

[1] The history of Voice of Reason's application, the Commission's grant of interim operating authority to Voice of Reason, and subsequent discontinuance of such authority is set forth in detail in para. 1 and the footnotes thereto of our Decision in this proceeding, and need not be restated here.

[2] In his Initial Decision, FCC 71D-12, released March 23, 1971, Administrative Law Judge Basil P. Cooper concluded that there had been no unauthorized transfer of control, but resolved the financial, misrepresentation, Rule 1.65 and *ex parte* issues unfavorably to the applicant and therefore denied its application.

[3] Also before the Board are an opposition, filed November 29, 1972, by the Broadcast Bureau, and a reply and correction of reply, filed December 11 and 12, respectively, by Voice of Reason.

attorney, Jerome Duff, signed escrow opening account cards. There was further evidence, Voice of Reason states, that the bank retained these cards and there was no testimony from Thomas Zelazny, the representative of the Federal Deposit Insurance Corporation (FDIC), which succeeded to the bank's assets and records, that these cards were not in the bank's records. Furthermore, Voice of Reason contends, the Board has improperly adopted non-record findings on the escrow matter by a Denver court adjudicating a suit brought by the FDIC against Voice of Reason, while at the same time implacably rejecting that court's findings on the question of consideration for the $60,000 loan. It is also the position of the applicant that the Board's conclusion that the consideration consisted of day-to-day control of the station is irrational because no benefit could conceivably be derived from control over a hopelessly mismanaged and financially weak station, compounded by no guarantee of transfer of legal title to the assets or rights to its license. Voice of Reason disputes the Board's alleged rejection of certain evidence relating to the indicia of retention of basic control by the licensee, and labels this alleged rejection as incredible. For example, Voice of Reason contends, such indicia as Norman's (the controlling member of the licensee) authority regarding format changes, correspondence between Norman and Barton, the station's manager, Barton's obedience to Norman with regard to possible sale of the station to another buyer, S. H. Patterson, and Barton's obedience generally, were improperly rejected by the Board. Voice of Reason is particularly critical of the Board's treatment of the Norman-Barton correspondence, arguing that the Board's interpretation of a previous Commission Order with respect to it was "manifestly erroneous" and that its rejection of this uncontradicted evidence was "legal error". In sum, Voice of Reason contends that the Board placed upon it "the insuperable burden of bringing in evidence negating every possible basis which the reviewing body might later conceive for distrusting the credibility of such evidence", and that the Board should more appropriately have remanded the proceeding to resolve credibility questions rather than reject evidence as incredible.

3. In its opposition, the Broadcast Bureau argues initially that Voice of Reason's petition for reconsideration is merely a repetition of its earlier arguments to the Board contained in its exceptions and made at oral argument and, on this basis alone, should be denied, citing *WWIZ Inc.*, 37 FCC 685, 686 (1964), affirmed *sub nom. Lorain Journal Company* v. *FCC*, 122 U.S. App. D.C. 127, 361 F.2d 824 (1965), cert. denied 383 U.S. 967 (1966); and *Cable TV Co.*, 33 FCC 2d 787, 23 RR 2d 990 (1972). However, with particular respect to the unauthorized transfer of control issue, the Bureau rejects Voice of Reason's contention that the Board's action was unlawful. The Board, the Bureau states, must study the Presiding Judge's reasoning and weigh the factors supporting and contradicting his conclusion, but may also draw its own inferences and reach its own conclusions, citing *Lorain Journal Company* v. *FCC*, *supra*; *Milton Broadcasting Company*, 34 FCC 2d 1036, 1047–48, 24 RR 2d 369, 383–84 (1972); and *Medford Broadcasters, Inc.*, 34 FCC 2d 989, 993, 24 RR 2d 359, 365 (1972). The Bureau points out that the Board disagreed with the Presiding Judge

basically because the latter failed to weigh all the record evidence in reaching his conclusions. Furthermore, the Bureau maintains, the evidence Voice of Reason labels as uncontradicted was in fact contradicted and was on its face incredible. As such, the Bureau concludes, this evidence could be accorded no weight, whereas the Board's conclusions are supported by record evidence as well as the inherent incredibility of Voice of Reason's contentions. In reply, Voice of Reason contends that its petition is not a mere reiteration of past arguments and that the Bureau does not cite any evidence contradicting that which the applicant claims was improperly rejected, or explain why the rejected evidence is on its face incredible.

4. The Board is of the view that Voice of Reason has presented no arguments or circumstances which would warrant reconsideration of our decision to deny its application under the unauthorized transfer of control issue. To begin with, as we indicated at para. 27 of our Decision, in *United Church of Christ*, *supra*, the Court of Appeals invalidated a Commission conclusion which was not grounded on substantial evidence basically because of the erroneous allocation of the burden of proof upon a public interest intervenor. Voice of Reason, as the applicant here, is not in a comparable position because it carried the burden of proof as well as the risk of non-persuasion. Contrary to Voice of Reason's contentions, this is not an "insuperable burden". For it is, in fact, the ordinary and customary burden faced by all applicants. (See para. 28 of our Decision.) Furthermore, the contention that the Board unlawfully rejected evidence which was uncontradicted and not on its face incredible, reflects a misreading of our Decision and is consequently, wrong on both counts. As shown by our Decision, the Board was essentially of the view that the Presiding Judge ignored or failed to give full consideration to numerous facts of record in resolving the unauthorized transfer of control issue. (See *e.g.*, paras. 3, 4, 15, 17 and 19, and note 13 of our Decision.) In reaching this conclusion, the Board acted in accordance with its legal responsibilities as set forth in principle and precedent cited at note 18 of our Decision, and by the Bureau in its opposition pleading. For example, and with reference to Voice of Reason's specific allegations, it was our view that the applicant's escrow account explanation strained credibility beyond its limit and could not be accepted. We relied upon evidence from the records of the Rocky Mountain Bank that the $60,000 loan funds, contrary to Beeny's explanation that they were being held in escrow, had in fact been distributed. (See para. 14 of our Decision.) Also, contrary to Voice of Reason's contention, Beeny's explanation and claims of innocence were in fact contradicted by substantial record evidence, including (a) his previous business experience and past exposure to escrow arrangements, (b) the presence of his attorney with him at the bank transaction, and (c) the absence from evidence of the allegedly signed escrow accounts cards or escrow agreement.[4] (See

[4] Voice of Reason's argument regarding Thomas Zelazny, the FDIC representative, is a non sequitur. To say that Zelazny did not testify that the escrow cards were not in the bank's records overlooks the point that he may not have been asked a direct question to that effect and could hardly be expected to volunteer such information otherwise. More important, however, the applicant again ignores the fact that it had the responsibility of introducing evidence necessary to dispel doubt or uncertainty.

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para. 15 of our Decision.) With respect to the consideration received for the $60,000, it was not the Board's judgment, as Voice of Reason implies, that the arrangement to obtain control over KICM was a wise one, but only that consideration (de facto control of the station) in fact existed. To the latter's existence, the record unmistakably and elaborately speaks. As set forth in detail at paras. 16–19 of our Decision, day-to-day operation and control over KICM passed to Beeny and Barton as consideration.[5] Again, contrary to the applicant's assertion, we did not ignore certain facts of record, such as the Norman-Barton correspondence, in reaching our conclusion, but in fact weighed all the evidence of record. Thus, with regard to the correspondence in question our Decision makes clear that we were relying on the content and the timing of the letters, and not on the Commission's prehearing judgment as to their probative worth. (See note 24 of our Decision.) Also, regarding the change in program formats, we did not, as the applicant states, reject this evidence as incredible, but in fact accorded weight to that particular incident of Norman's assertion of authority; however, we pointed out that this single incident was outweighed by numerous other incidents of record tending to prove that Voice of Reason had participated in an unauthorized transfer of control. (See para. 17 of our Decision.) Finally, as to the Patterson matter, this incident is not, alone or in combination with any other matters raised by Voice of Reason in its petition or in its previous pleadings, sufficient to overcome the overwhelming weight of evidence in this record that the applicant engaged in a premature transfer of control of KICM. (See para. 20 of our Decision.) [6]

5. With regard to the financial issue, Voice of Reason basically argues that the Board again based its conclusions on its disbelief of undisputed evidence. That is, Voice of Reason submits, the Board held that the applicant failed to document the availability and ownership of the assets it relied upon to meet first-year costs despite Beeny's affidavit and testimony that the assets were pledged to Voice of Reason's use by its affiliated organizations.[7] Voice of Reason concedes that an applicant's testimony as to the availability of loan funds must be corroborated, but argues that where, as here, applicant and lender are one and the same by reason of common control, such corroboration is *ipso facto* present. In addition, Voice of Reason contends that Gospel Revival Hour, one of its affiliated organizations, transferred to it an asset worth $128,000 (the Missouri Youth Ranch), and that during Voice of Reason's interim operation of KICM, the current assets of Gospel Revival Hour were made available to it. Further, Voice of

[5] With regard to the suit brought by the FDIC against Voice of Reason, we note that the applicant first brought the fact that a judgment had been rendered to the Board's attention at the oral argument held May 2, 1972. In that the suit is central to the Rule 1.65 issue, we took official notice of the judgment at note 11 of our Decision, and we also referenced to it elsewhere in the Decision, *e.g.*, notes 12 and 14. However, we reject as unfounded Voice of Reason's suggestion that we adopted or rejected some of the court's findings in lieu of our own. Our Decision clearly sets forth that our findings derive from the record compiled in this proceeding. (See paras. 3 and 4 of our Decision.)

[6] Apart from the fact that the applicant has at no time formally petitioned the Board for remand of the proceeding, it should be apparent that cause for remand does not arise from an applicant's failure to carry the burden of proof or to successfully resolve an issue in its favor.

[7] Voice of Reason alleges that the Board "sidestepped" its showing of expected revenues based on the past interim operation of KICM. In this connection, see note 8, *infra*.

Reason states, it was created by Freedom Baptist Temple for the purpose of acquiring a station, and the pledge of assets from the latter to it for this purpose is therefore believable. Voice of Reason also contends that (a) the Board imposed an "unprecedented burden" upon it by requiring that it document Freedom Baptist Temple's ownership of the assets on its balance sheet; and (b) neither the application form nor Commission precedent requires such documentation, in the applicant's view. Freedom Baptist Temple's ownership of its two largest assets, the Missouri Youth Ranch and the 320 acres of land in Warren County, Voice of Reason contends, were shown by documentary proof. Finally, Voice of Reason concludes that if the assets in question were indeed available to it, they would indisputably have sufficed to meet its financial requirements.

6. In its opposition, the Bureau argues that the record does not support Voice of Reason's contention that it is financially qualified. The only support Voice of Reason has for its contention, the Bureau states, are Beeny's self-serving statements. The record does show, the Bureau submits, that the assets listed on the applicant's balance sheets are not owned by it and that many of its liabilities are not reflected. As an example of what it considers to be the "absurdity" of Voice of Reason's balance sheet, the Bureau sets forth the history of one of the listed assets, the Missouri Youth Ranch, as follows: (1) the property was transferred from the Gospel Revival Hour to Voice of Reason on July 10, 1968; (2) on the same day, a deed of trust on the property was executed and, on July 12, 1968, was recorded in Warren County, Missouri; (3) in 1969, the Gospel Revival Hour was dissolved as a legal entity; (4) on April 15, 1970, Gospel Revival Hour conveyed the property to the Freedom Baptist Temple; (5) on September 11, 1970, Voice of Reason conveyed the property to Freedom Baptist Temple; (6) on September 16, 1970, Gospel Revival Hour conveyed the property to Freedom Baptist Temple. The Bureau concludes that it is impossible to ascertain from the record who owns the property. In reply, Voice of Reason claims that the Bureau's example of the Missouri Youth Ranch only goes to prove that the property was both available to Voice of Reason and was continuously owned within the "Voice of Reason family of commonly owned" organizations.

7. As shown by our Decision, it was and remains the Board's view that it was fundamental to the applicant's case that it establish beyond question the existence of its alleged pledge of assets from Freedom Baptist Temple. However, in our view, this was never done and the applicant's present arguments do not alter that conclusion. In spite of Voice of Reason's claim that the congregation of Freedom Baptist Temple approved the pledge, no substantiation by way of a record of the congregation's minutes, or its vote, or in any other form, was presented. Contrary to Voice of Reason's claim that Beeny's testimony is sufficient without more to establish the pledge, Section III of application Form 301 expressly requires a *written* copy of the agreement by which third persons are obligating themselves to furnish funds to the applicant. Moreover, there is ample Commission precedent that an applicant's uncorroborated testimony as to the availability of loan funds is insufficient to establish such availability. In our view, this

principle is equally applicable to Beeny's uncorroborated and self-serving testimony as to the availability of pledge funds. Furthermore, the relationship between Voice of Reason and Freedom Baptist Temple, the financial condition of Freedom Baptist Temple, the chain of title to the principal asset, the Missouri Youth Ranch, as well as many other questions, remain confused and uncertain, despite Voice of Reason's explanations. The situation with regard to the Ranch is particularly well set out by the Bureau in its opposition, and Voice of Reason's response that this history establishes continuous common ownership is simply inaccurate. (See notes 35 and 38 of our Decision.) Voice of Reason's burden under this issue was not "unprecedented" as it claims; it was to establish a clear, complete and accurate picture of its financial condition. Reference to a "family of commonly owned" organizations, without any convincing evidence to support this description, cannot overcome a confused, inaccurate and incomplete showing of the availability and ownership of the assets in question.[8] (See Section III of our Decision and particularly para. 34 thereof.) No additional clarification has been provided by Voice of Reason's petition for reconsideration and, therefore, no warrant exists for altering our conclusion that there has been a failure of proof under this issue.

8. With respect to the misrepresentation issue, Voice of Reason asserts that, although it did not report as a liability the $60,000 note it executed at the Rocky Mountain Bank, such failure could not justify a finding that Voice of Reason intended to conceal the existence of a valid obligation. Having never allegedly received value for the note, Voice of Reason contends it could not, under elementary accounting principles, have reflected the $60,000 as a liability. The same arguments, petitioner asserts, apply to its failure to reflect delinquent taxes on its balance sheet. No grounds exist in either case, Voice of Reason contends, for a conclusion that there was anything more than an honest mistake. Indeed, the applicant contends, the alleged disparity between the court in the FDIC suit and the Board as to the consideration for the note indicates that such a mistaken belief could occur.[9] Likewise, no element of deliberate deception attaches, Voice of Reason claims, to its failure to specify who owned the assets it was relying on. The assets were in the "family of closely related organizations", Voice of Reason states, so that technical ownership by another entity was immaterial.

9. In opposition, the Bureau states that the Board disposed of Voice of Reason's present contentions at para. 43 of the Decision, and that no repetition is therefore needed. Indicative of the applicant's attitude, the Bureau states, is that it still believes it may reflect an asset on the balance sheet but not a liability affecting that asset. In reply, Voice of Reason repeats its argument that the Board ignored evidence contrary to its own view of the facts, and alleges that the Bureau's comments miss the point. Voice of Reason also claims that in cases decided

[8] The Board did not "sidestep" or ignore Voice of Reason's claims of revenue and sufficiency of assets in its Ruling on Exceptions no. 31. Obviously, no decisional significance could attach to these matters if the applicant could not show that the balance sheets and assets contained thereon were theirs to begin with.

[9] Voice of Reason alleges that there is no requirement in the application form or elsewhere for apprising the Commission of the FDIC suit.

subsequent to the Board's Decision herein, the Board held that the mere failure to report a pending civil suit is not in itself disqualifying, at least if the suit does not affect the applicant's financial qualifications, citing *Centreville Broadcasting Company*, FCC 72R–330, 38 FCC 2d 27, released November 20, 1972, and *Azalea Corporation*, FCC 72R–336, 33 FCC 2d 95, released November 24, 1972. Finally, petitioner argues that, in the Ruling on Exception no. 31, the Board ignored Voice of Reason's alleged showing that it could meet first-year costs even if it were liable on the $60,000 note.

10. Certain of Voice of Reason's arguments, *e.g.*, that the Board has rejected unrebutted evidence, and that the Ruling on Exception no. 31 ignored the financial showing, are merely repetitive of arguments dealt with earlier and, as such, warrant no further discussion.[10] The essence of Voice of Reason's deficiency under the misrepresentation issue is that the bulk of the assets listed by it on the balance sheet submitted with its application were not its own, but belonged to Gospel Revival Hour. Furthermore, neither this fact, nor the relationship for purposes of the application between the two entities, including any reference to Gospel Revival Hour, nor the alleged existence of a pledge of the assets from one to the other organization, were explained or disclosed in the application or the financial amendment thereto. Voice of Reason's present arguments do not ameliorate these shortcomings. The same failure of proof which attached to the asserted pledge from Freedom Baptist Temple is presented here. As the Bureau notes, the applicant's arguments with respect to the disputed liabilities were answered at length in para. 43 of our Decision. It bears repeating, however, that the applicant could easily have listed the debts and noted the dispute instead of not listing them at all; and, we still find it to be seriously misleading, in the case of the $60,000 note, for the applicant to list the property as an asset but to ignore the encumbrance. Finally, Voice of Reason's position with respect to the Rule 1.65 issue is not aided by the recent precedent it cites. This issue derives from the applicant's failure to report the FDIC suit against it for the balance of the $60,000 note. Both of the cases relied on make clear that the necessity to report lawsuits, pursuant to Rule 1.65, depends upon their potential decisional importance. In *Centreville Broadcasting Co., supra*, we said ". . . an applicant must report those suits which may be of decisional significance", quoting *Folkways Broadcasting Co., Inc.*, FCC 71R–63, 21 RR 2d 211, 215 (1971). The suits in question in *Azalea* and *Centreville* could have had no effect on the applicants' financial qualifications. In our Decision in this case, we expressly determined at para. 44 that the FDIC suit had direct bearing on Voice of Reason's financial qualifications. As such, it was clearly germane and should have been reported. (See note 41 of our Decision, and note 11 of *Azalea Corp., supra.*)

[10] In fact, Voice of Reason's argument under the financial and misrepresentaiton issues that the Board almost completely disregarded findings made by the Presiding Judge because of the Board's doubts as to credibility, ignores the plain language of our Decision. As we clearly stated at paras. 2, 3 and 35 of our Decision, unlike the unauthorized transfer of control issue, we found the Judge's findings on the other issues to be substantially accurate and, accordingly, we adopted them for the most part.

11. Finally, with regard to the *ex parte* issue, Voice of Reason contends that the communications solicited by Beeny to the Commission were specifically addressed to the termination of its interim operating authority which was not a restricted or adjudicatory proceeding. Voice of Reason submits that the fact that the Commission designated its application for hearing at the same time did not change the non-restricted character of the interim operation proceeding. The applicant also claims that the Board has misunderstood its argument and has arbitrarily construed the *ex parte* rules. This is true, argues Voice of Reason, because termination of its interim authority was "doubtlessly" made on the basis of *ex parte* presentations to the Commission by the Broadcast Bureau. This is unfair and inconsistent application, petitioner contends, and, in any event, there was no willful intent to violate the rules on its part. In opposition, the Bureau briefly states that Voice of Reason's arguments are the same as those presented earlier and, as such, were adequately disposed of in para. 48 of the Board's Decision. In reply, Voice of Reason argues once more that the Board rejected uncontested evidence in resolving this issue and ignored its position with respect to the applicability of Rule 1.1203(a).

12. The Board agrees with the Bureau that Voice of Reason is only restating arguments previouly dealt with in our Decision. Contrary to Voice of Reason's claim, we set forth its major contention in the second sentence of para. 48 of our Decision. Thereafter, we explicitly made clear in a step-by-step analysis how Beeny's actions constituted solicitations of impermissible communications. It was and remains our view that Beeny's letter, following the Commission's denial of Voice of Reason's reconsideration petition, was a direct appeal to his listeners to protest designation of Voice of Reason's application for permanent operating authority for hearing. This was not an arbitrary conclusion, but was based on the facts and our analysis as contained in paras. 45–48 of our Decision. We also perceive no prejudicial application of the *ex parte* rules to Voice of Reason. In our view, the applicant misunderstands the Bureau's investigatory role. As such, this claim of prejudice has also been dealt with in our Decision generally in Section II thereof, and particularly at para. 24. Finally, with respect to the argument that the rules were not willfully violated, we point out, as we did in para. 48 of our Decision, that Voice of Reason did not establish that inadvertence, good faith or innocence attached to Beeny's actions. In short, reconsideration of our determination under the *ex parte* issue, as with the other issues, is unwarranted.

13. Accordingly, IT IS ORDERED, That the petition for reconsideration, filed November 20, 1972, by Voice of Reason, Inc. (KICM), IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-207

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In Re Application of SAMUEL L. ROSENBERGER AND RICHARD C. ROSENBERGER, D.B.A. WAUCHULA BROADCASTING CO. (ASSIGNOR) and BARCO, INC. (ASSIGNEE) For the Assignment of the License of Station WAUC, Wauchula, Fla.	File No. BAL-7440

ORDER

(Adopted February 21, 1973; Released February 27, 1973)

BY THE COMMISSION:

1. The assignee is fully qualified.

2. The license was assigned to the assignor by grant of September 24, 1969 (BAL-6692) and the subject application was filed October 4, 1971. Therefore, the application is governed by the Commission's "Three Year Rule", Section 1.597.

3. The application proposes an assignment of Station WAUC to Barco, Inc., a new corporation. The assignors are 50% stockholders of this corporation. The other 50% belongs to Georgia M. Brush (25%) and Jerald A. Brush (25%). The Brushes are the licensees of Station WPRV, Wauchula, which is currently silent. On the closing date, the Brushes will surrender the license for WPRV to the Commission. The essence of this transaction is that the Brushes are paying one dollar plus $22,000 worth of WPRV assets for 50% of Station WAUC. The Rosenbergers bought the station in 1969 for $65,000. For the past several years, neither Station WAUC nor Station WPRV has been profitable. Assignors state that the circumstances have changed in that Wauchula cannot support more than one radio station. They believe that the public interest is better served by having one strong station in Wauchula rather than two weak ones. Wauchula's population is 3,007. It is located in Hardee County, Florida which has a population of 14,889. There is no evidence of trafficking in broadcast licenses. In view of these circumstances, a hearing based on the Commission's "Three Year Rule" is not indicated.

4. The assignee is fully qualified and a grant of this application will serve the public interest, convenience and necessity. Therefore, the above application IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-79

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WIOO, INC., CARLISLE, PA.	Docket No. 19468 File No. BPH-6572
HOWARD J. HILTON, JOHN E. McGOWAN, AND JOHN E. HILTON, DOING BUSINESS AS HILTON, McGOWAN & HILTON, CARLISLE, PA.	Docket No. 19469 File No. BPH-6631
ALEXANDER CONTRACT AND SYLVIA CONTRACT D.B.A. CUMBERLAND BROADCASTING CO., CARLISLE, PA.	Docket No. 19471 File No. BPH-7404
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 22, 1973)

BY THE REVIEW BOARD: BOARD MEMBER BERKEMEYER ABSENT.

1. Before the Review Board is a petition to enlarge issues, filed October 6, 1972, by WIOO, Inc. (WIOO), requesting the addition of the following three issues against Cumberland Broadcasting Company (Cumberland): (a) to determine the basis of Cumberland's representations that land would be available to it on the basis of an annual lease of $500.00; (b) to determine whether Cumberland had been guilty of misrepresentation and concealment in connection with the costs involved in its use of the land proposed for its transmitter site; (c) to determine whether Cumberland has correctly represented all of the facts and circumstances surrounding the proposed loan from Donald C. Hartman in its application as originally filed, and in its pleadings submitted in response to petitions to enlarge issues filed by WIOO.[1] [2]

2. In support of requested issues (a) and (b), WIOO alleges that Cumberland is guilty of misrepresentation and concealment in connection with the cost of the land necessary for its proposed transmitter site. WIOO points out that the Cumberland application as originally filed represented that the land necessary for the trans-

[1] Also before the Review Board are the following related pleadings: (a) motion to file supplement, and supplement to petition to enlarge issues, filed October 13, 1972, by WIOO; (b) Broadcast Bureau's comments on (a), filed October 18, 1972; (c) opposition, filed October 19, 1972, by Cumberland; (d) Broadcast Bureau's comments, filed October 26, 1972; (e) reply, filed October 30, 1972, by WIOO; and (f) petition for leave to file, and supplement to opposition, filed November 28, 1972, by Cumberland.

[2] The Board is of the view that petitioner has not shown good cause for the late filing of its motion to enlarge. The Board, will however, consider the request on the merits since the allegations raise serious questions regarding Cumberland's basic qualifications and since the petition to enlarge was filed within four days after Mr. Swidler received the option agreement. See Note 3, *infra*. *The Edgefield-Saluda Radio Co.* (*WJES*), 5 FCC 2d 148, 8 RR 2d 611 (1966).

mitter site was available to it on the basis of an annual lease of $500 and this representation was repeated in a subsequent amendment. However, petitioner asserts that the only arrangement for use of the land was a cash purchase in the amount of $9,000.00 for a five-acre plot.[3] Petitioner claims that if the actual cost of the land had been disclosed in the original application, a serious question would have arisen concerning Cumberland's financial qualifications.[4] Next, in support of its requested issue (c), WIOO alleges that Cumberland misrepresented its relationship with Hartman in the original filing. Petitioner contends that Alexander Contract had promised Hartman an ownership interest in Cumberland and the position of manager of the proposed station in return for Hartman's promise to lend Cumberland $20,000 and that Cumberland's application should have disclosed this interest. In support, WIOO submits an affidavit from Hartman indicating that it was in late 1970 when he was offered the position of manager and the ownership interest in consideration of his loan commitment. Petitioner also submits a telegram dated October 6, 1972, in which Hartman states that he made the loan agreement solely because of this offer of ownership and employment.[5] Petitioner further requests the Review Board to review its previous ruling and enlarge the issues to permit a full inquiry with respect to all of Cumberland's past and present proposals to finance its construction and operation.[6] The Broadcast Bureau supports addition of the requested issues.

3. In opposition, Cumberland claims that the mistake in regard to the transmitter site was an honest human error and disclaims any intent to mislead the Commission. In an affidavit attached to the opposition, Contract posits as a possible explanation for the mistake the fact that he had discussed with his attorneys a proposed leasing arrangement for another site, which never came to pass.[7] With respect to the Hartman loan, Cumberland maintains that the possible ownership interest of Hartman was a thing of the past at the time the Cumberland application was filed and denies any hidden ownership

[3] Submitted in support of its allegation is an affidavit from Harold Swidler which states that Thomas Boylan indicated to Swidler that in March of 1971, he and his wife entered into an agreement with Alexander and Sylvia Contract pertaining to the said property. In addition, petitioner submitted a copy of the option agreement between the Contracts and Mr. Boylan.

[4] WIOO asserts that Cumberland relied in its original filing on total available resources in the amount of $128,445 and its total first year's cash requirements were $127,315, leaving a cushion of slightly more than $1,000; therefore, an expenditure of $9,000 for five acres of land would have resulted in a deficit of approximately $7,870.

[5] On October 13, 1972, WIOO filed a supplement to its petition to enlarge issues containing an affidavit of Hartman substantiating the facts set forth in his telegram. The Board agrees with the Bureau that the supplement does not violate the Board's notice of October 11, 1972, regarding "the filing of successive supplements long after the initial interlocutory pleading was filed", and therefore will accept the supplement.

[6] WIOO has previously requested issues inquiring into the three loan commitments originally relied upon by Cumberland but the Review Board in a Memorandum Opinion and Order, FCC 72R-255, 37 FCC 2d 342, released September 20, 1972, denied the requested issues. One of the requested issues concerned the circumstances surrounding the proposed loan from Donald C. Hartman. The Board has recently, however, specified an issue to determine whether Cumberland misrepresented the terms and conditions of a loan commitment from James Line (FCC 73R-69, — FCC 2d —, released February 9, 1973).

[7] Cumberland's petition for leave to file a supplement to its opposition will be denied. The Board stated in its Public Notice No. 90836, released October 11, 1972 (Filing of Supplemental Pleading Before the Review Board) that it would closely scrutinize all alleged justifications for the filing of supplemental pleadings. Cumberland's request to supplement its opposition comes more than a month after the filing of its initial opposition and Cumberland has not satisfactorily explained the delay nor why it did not include this material in its initial opposition.

or other misrepresentation on the part of Cumberland. Submitted in support of its contention is a telegram from Hartman, dated October 18, 1972, to the effect that he had no ownership interest or promise of ownership interest in Cumberland after the application was filed.[8] As to the requested issues concerning Cumberland's proposals for financing its construction and operation, the applicant maintains that the Review Board has already ruled on these issues and is precluded from reconsidering its interlocutory rulings by Sections 1.102(b)(2) and 1.106(a).

4. The Review Board will add requested issues (a) and (b). We believe that a substantial question has been raised with respect to whether Cumberland has misrepresented and concealed facts in connection with the costs involved in its use of the land proposed for its transmitter site. In our view, Cumberland has not successfully negated the allegation of willful misrepresentation, especially in view of the fact that a substantial question as to Cumberland's financial qualifications would have been raised if the actual cost of the land had been disclosed in the original application. Furthermore, the alleged misrepresentation was repeated in an amended financial statement submitted on June 13, 1972. Therefore, the Board will add an appropriate issue to permit a full inquiry of this matter at the hearing. The Board is of the opinion, however, that addition of requested issue (c) relating to the Hartman loan is not warranted. We have no reason to doubt the statement of Hartman, affirming the affidavit of Contract, that he had no ownership interest or promise of ownership interest in Cumberland after the application was filed. Therefore, Cumberland has, to our satisfaction, adequately answered the petitioner's allegation that Cumberland misrepresented its relationship with Hartman in the original filing. Furthermore, we do not believe that the statements contained in the affidavits and telegrams from Hartman are conflicting. Hartman originally stated that in late 1970 he made the loan agreement solely because of the offer of ownership and employment but circumstances changed and by March, 1971, when the application was filed, Hartman no longer had any interest in participating in the business in any capacity. Petitioner's belief that the loan is "simply incredible" is conjecture and not supported by sufficient allegations of fact to permit a full inquiry concerning the circumstances surrounding the proposed loan from Hartman.[9] The requested issue concerning the Hartman loan will therefore be denied.

5. Accordingly, IT IS ORDERED, That the motion to file supplement to petition to enlarge issues, filed October 13, 1972, by WIOO, Inc., IS GRANTED, and the supplement IS ACCEPTED; and

6. IT IS FURTHER ORDERED, That the petition for leave to file, filed November 28, 1972, by Cumberland, IS DENIED; and

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[8] Hartman's telegram corroborates the affidavit of Contract attached to the opposition.

[9] Moreover, the Review Board has already considered and denied such a requested issue. See Memorandum Opinion and Order, FCC 72R-255, *supra*. The Board will also deny the requested issues inquiring into Cumberland's past and present proposals to finance its construction and operation, since no allegations sufficient to warrant such an issue have been presented. However, see note 6, *supra*.

7. IT IS FURTHER ORDERED, That the petition to enlarge issues, filed October 6, 1972, by WIOO, Inc., IS GRANTED to the extent herein indicated, and IS DENIED in all other respects; and

8. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED by the addition of the following issues:

(a) To determine the basis of Cumberland's representations in its application and amendments thereto that land would be available to it on the basis of an annual lease of $500.

(b) To determine whether Cumberland had misrepresented or concealed facts in connection with the costs involved in its use of the land proposed for its transmitter site.

9. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the issues added herein SHALL BE on WIOO, Inc., and the burden of proof thereunder SHALL BE on Cumberland Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72D–79

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WNER RADIO, INC., LIVE OAK, FLA. For Construction Permit	Docket No. 18975 File No. BPH–6858

APPEARANCES

E. Theodore Mallyck, Esq., on behalf of WNER Radio, Inc.; and *Earl C. Walck* and *Joseph Chachkin, Esqs.*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE ISADORE A. HONIG

(Issued December 22, 1972; Effective February 21, 1973, Pursuant to Section 1.276 of the Commission's Rules)

PRELIMINARY STATEMENT

1. This proceeding involves the application of WNER Radio, Inc. ("WNER") for an FM radio station in Live Oak, Florida, to operate on Channel No. 251 (98.1 Mc/s), with power of 50 KW. Originally the WNER application was designated for comparative hearing with the competing application of Live Oak Broadcasting Company ("Live Oak") by order of the Commission (FCC 70–932) released September 3, 1970. In addition to the inclusion of the standard comparative issue, a financial qualifications issue was specified with respect to WNER and a *suburban* programming issue (ascertainment of needs) was specified with regard to Live Oak. A prehearing conference was held on October 22, 1970, and hearing sessions to receive evidence on the WNER financial issue and the comparative issue were held on December 1, and December 22, 1970.[1a] The record was left open pending Review Board action on an enlargement petition filed by WNER seeking additional issues against Live Oak. However, pursuant to arrangement made on December 22 for post-hearing submissions by the parties, proposed findings of fact and conclusions on the original issues were filed by each of them in the latter part of March 1971.[1]

2. By order of the Review Board (FCC 71R–83) released March 12, 1971, the issues in the proceeding were enlarged by the addition of certain character qualification issues concerning Live Oak. These issues grew out of charges against a principal of Live Oak before the Florida State Insurance Department. Hearing on the new issues was held on June 15 and 16, and July 30, 1971. The record was closed on the last-

[1a] Evidence on the *Suburban* Issue was also presented.
[1] Live Oak did not file proposed findings of fact and conclusions on the WNER financial issues.

mentioned date. Supplementary proposed findings and conclusions on these issues were filed by Live Oak on September 10, 1971 and on the same date WNER filed a statement in lieu of proposed findings and conclusions. On October 1, 1971, the Broadcast Bureau filed a request for the postponement of its submission of proposed findings and conclusions, and indicated that the Florida Department of Insurance was in the process of instituting new charges against a principal of Live Oak arising out of his activities as an insurance agent. By an order released October 6, 1971, the Bureau's request was granted and the filing date for its post-hearing submission on the added issues was postponed indefinitely. New charges against the Live Oak principal were filed by the Insurance Commissioner of Florida on January 31, 1972, after which the presiding judge in this proceeding ruled (FCC 72M–461) on April 6, 1972, that the existing issues did not encompass those charges. Meanwhile, WNER filed on March 20, 1972, a motion to further enlarge issues based on the developments before the Florida State Insurance Agency.

3. On April 18, 1972, Live Oak filed a petition for leave to amend its application to reflect the withdrawal as stockholder with a one-third interest of its principal whose activities as insurance agent led to the inclusion of additional issues against this applicant. A further petition for leave to amend was filed by Live Oak on May 10, 1972 for the purpose of showing that its financial proposal would not be impaired by the withdrawal of the stockholder mentioned above. By memorandum opinions and orders (FCC 72M–758 and FCC 72M–784, respectively), released June 12 and June 14, 1972, the amendatory petitions of Live Oak were granted. By orders released June 20, 1972, the filing of appeals by WNER from the orders permitting the amendments was allowed. Appeals were then filed by WNER on June 27, 1972. On July 19, 1972 and September 12, 1972, WNER also filed petitions for further enlargement of the issues.

4. On November 2, 1972, Live Oak filed a petition for dismissal of its application without reimbursement. By an order (FCC 72M–1458) released November 27, 1972, the application of Live Oak was dismissed with prejudice and the WNER application was retained in hearing status for issuance of an Initial Decision thereon.[2]

5. In consequence of the dismissal of the Live Oak application the following issues concerning WNER's application are left for consideration:[3]

> 1. To determine the amount required by WNER Radio for construction and first-year operation of its proposed station without reliance on revenues and the availability of the necessary funds to WNER Radio to thus demonstrate its financial qualifications.
>
> 2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, whether the application of WNER Radio for construction permit should be granted.

[2] By its order (FCC 72R–354) released December 5, 1972, the Review Board dismissed the pending appeals and enlargement petitions of WNER as having become moot.

[3] See Commission's order of designation (FCC 70–932) released September 3, 1970 at p. 2 (Issues numbered 1 and 4).

Findings of Fact

CORPORATE ORGANIZATION OF WNER RADIO, INC.

6. Norman O. Protsman, 80% stockholder in WNER Radio, Inc. is the president and a director of this applicant. George R. Day, Jr., 10% stockholder in WNER, is the vice-president, secretary, treasurer and a director thereof. Clarence S. Parker and William M. Savitz each own a 5% stock interest and both are directors (WNER Ex. 2).

FINANCIAL QUALIFICATIONS

A. Construction and operating costs through first year of operation

7. The proposed FM station will be operated in conjunction with the applicant's existing AM station WNER, and the AM station personnel will take on additional duties of operating the FM station without any added compensation during the first year of FM operation (WNER Ex. 1, p. 1). The AM staff consists of six full-time and two part-time employees. The top four staff personnel of WNER, each employed full-time, own 100% of its stock (WNER, Ex. 1–C). WNER would also engage either one full-time man and one part-time man, or three part-time men, to handle on-the-air work and to assist in sales and programming for the FM station (*Ibid.*).

8. The functions of the AM staff and their additional FM duties are as follows:

Norman O. Protsman, President, Supervisor over-all operation. Assists in sales and public relations. Additional FM duties same as above, plus engineering duties.

George R. Day, General Manager, Directly responsible for over-all operation. Directs and supervises sales, news, programming, public affairs and traffic. Very active in sales, also has some announcing duties. Additional FM duties will include direction of both operations.

Clarence S. Parker, Engineer-Announcer, Responsible for equipment maintenance. Key on-air announcer. Also assists in sales and commercial production. Additional FM duties will include being responsible for over-all equipment maintenance, and participation in sales and commercial production.

William M. Savitz, Salesman Announcer, Main responsibility is sales and commercial production. Announcing 1-hour per day, plus 2 major newscasts. Helps with Programming Department. Additional FM duties will include sales, commercial production, and announcing.

Charles Hunter, News Director-Announcer, Main responsibility is gathering and writing news. Does 2½ hours of anouncing plus commercial production. Additional FM duties will include all of the above plus additional announcing duties.

Brenda Thomas, Secretary-Traffic Director, Main responsibilities include preparing daily log. Station billing and bookkeeping. Additional FM duties will include all of the above.

Fred Glass, Part-time announcer, main responsibilty is working on weekends. Additional FM duties will include evening work during the week.

Robert Stamper. Part-time announcer, main responsibility is afternoon and evening and weekend on-air work. Additional on-air work and possibly full-time employment to help with news, programming, and commercial production with FM (WNER Ex. 1-c).

9. WNER has a proposal from Capital Leasing Corporation for the leasing of FM station equipment (transmitting equipment; monitor equipment; FM antenna and transmission line, including installation; tower equipment; and studio technical equipment). The lease arrangement would run for a period of 84 months, with an option to purchase at the end of the lease period for $2,300. The leasing cost, based on $23,000 of equipment, will be $411.00 per month, with the 12 first-year payments amounting to $4,932.[4]

10. Other costs to be incurred and requiring cash payment during construction and first year's operation of WNER's proposed station will be as follows (WNER Ex. 1, p. 2):

Shipping costs and installation charges for FM equipment not covered by lease.	$400
Additional FM studio equipment	1,000
FM audio proof	200
FM replacement tubes and parts, and FM equipment maintenance	400
Additional electrical power costs for FM transmitter	1,600
Additional FM music library and license expense	1,000
Additional FM accounting expense	150
Additional FM insurance and tax expense	750
Additional FM office supplies	200
Additional FM salaries	12,000
Other FM pre-air expenses	500
Other FM operating expenses	4,500
Total costs (exclusive of equipment lease payments)	22,700

B. Availability of funds

11. To meet its cash requirements, WNER has a loan commitment for $30,000 from the First National Bank of Live Oak. No payments on the loan principal or interest will be due until the beginning of the 15th month of the loan. Allowing for a 60-day construction period for the FM station, the applicant will not be obligated to make interest or principal payments, until after the first year of station operation. The loan will then be amortized over a period of five years in equal quarterly payments with the first payment to include the interest due for the first fifteen months. The note for the loan is to be personally endorsed by Norman O. Protsman, the majority stockholder of WNER.[5] As required by the lender, Mr. Protsman has agreed to personally endorse the note of WNER to the bank as collateral for the $30,000 loan (WNER Ex. 1-E).

[4] WNER Exhibits 1-A and 1-B show the leasing arrangement and the equipment to be furnished thereunder by Capital Leasing Corporation. Based on the costs detailed above and the equipment lease payments totaling $4,932 for the first year of operation, the total cash requirements of WNER for its proposed FM station through the end of the initial year of operation will be $27,632.

[5] The loan commitment and its terms are shown by WNER Ex. 1-D.

Conclusions

12. The sole evidential issue in this proceeding requires determination of: (1) the amount required by WNER for construction and operation of its proposed station through the first year without reliance on revenues; and (2) the availability of the necessary funds to meet initial construction and first year operating costs. The findings establish that WNER will require $27,632 to construct and operate the proposed FM station for one year. The FM station will be operated in conjunction with WNER's existing AM station in Live Oak and the AM station employees will construct and operate the FM station for the first year without additional compensation. The applicant expects to hire more personnel to handle on-air work and to assist in sales and programming. The estimate of operating costs provides for this augmentation in staff.

13. To meet the cash requirement stated above, WNER has available to it the proceeds of a $30,000 loan from the First National Bank, located in Live Oak. As required by the Bank, Norman O. Protsman, WNER's majority stockholder, has agreed to personally endorse the note to be furnished to the bank.

14. Since WNER has demonstrated that it will have available to it from a bank loan cash in an amount that will be more than sufficient to meet expenses through the first year of operation, it is concluded that the applicant is financially qualified. Since the Commission has found in its designation Order that WNER is qualified in all other respects to construct and operate its proposed station, it is further concluded that the public interest would be served by grant of the WNER application under consideration.

In view of the foregoing, IT IS ORDERED, That unless an appeal from this Initial Decision is taken by a party or the Commission reviews the Initial Decision on its own motion, in accordance with the provisions of Section 1.276 of the Rules, the application of WNER Radio, Inc., for a new FM radio station to operate on Channel 251 at Live Oak, Florida, IS GRANTED.

Isadore A. Honig,
Administrative Law Judge,
Federal Communications Commission.

F.C.C. 73-192

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
AMERICAN TELEPHONE & TELEGRAPH CO.	P-C-8276-1
ITT WORLD COMMUNICATIONS INC.	T-C-2452-1
RCA GLOBAL COMMUNICATIONS, INC.	T-C-2448-1
WESTERN UNION INTERNATIONAL, INC.	T-C-2444-1
Applications for Authority To Participate in the Construction and Operation of the TAT-6 SG Submarine Cable System Between the United States and France	
AMERICAN TELEPHONE & TELEGRAPH CO.	P-C-8277-1
Applications for Authority To Acquire and Operate Circuits in the CANTAT-II Submarine Cable System Between Canada and the United Kingdom, and To Make Available Circuits in the TAT-6 SG Submarine Cable System Between the United States and France	
ITT WORLD COMMUNICATIONS INC.	T-C-2451-1
RCA GLOBAL COMMUNICATIONS, INC.	T-C-2453-1
WESTERN UNION INTERNATIONAL, INC.	T-C-2443-1
Applications for Authority To Acquire and Operate Circuits in the CANTAT-II Submarine Cable System Between Canada and the United Kingdom	

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

(Adopted February 14, 1973; Released March 1, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

GENERAL

1. The Commission has under consideration a joint application filed on November 27, 1972 by American Telephone and Telegraph Company (AT&T), ITT World Communications Inc. (ITT Worldcom), RCA Global Communications, Inc. (RCA Globcom), and Western Union International, Inc. (WUI), requesting modification

109-030—73——1

of the Commission's Memorandum Opinion, Order and Authorization adopted July 7, 1972, *American Telephone & Telegraph Co. et al.*, 35 F.C.C. 2d 801 (Decision).

2. The subject application was listed on the Commission's December 4, 1972 Public Notice of Applications Accepted for Filing. Copies thereof, together with notices extending the opportunity to file comments, were mailed to the parties required to be served by statute and to other interested parties. No comments were received.

3. The Commission, in its July 7, 1972 Decision, *inter alia*, authorized:

a. AT&T to

(1) acquire, on an ownership basis, 476 whole circuits and 1,849 half circuits in the TAT–6 cable system.

(2) acquire, on an IRU basis, a half interest in 150 circuits in the CANTAT–II cable system for a period up to and including the year 1979, and

(3) make available the whole interest, on an IRU basis, in up to 150 circuits to COTC and the BPO, and COTC and the French PTT, until the end of 1979, on condition that it has the option to repurchase such circuits at or prior to that time and further that any exercise of that option shall be conditioned on the proportionate reacquisition by COTC of CANTAT–II circuits held by U.S. carriers;[1] and

b. ITT Worldcom, RCA Globcom and WUI to each

(1) acquire, on an ownership basis, 26 whole circuits and 89 half circuits in the TAT–6 cable system, and

(2) acquire, on an IRU basis, a half interest in 20 circuits in the CANTAT–II cable system for a period up to and including the year 1979.

In addition, the Commission placed 247 whole circuits and 912 half circuits in the TAT–6 cable system in a reserve pool, to be held jointly by AT&T, ITT Worldcom, RCA Globcom and WUI for subsequent allocation by the Commission on showing of future needs and concurrence of appropriate foreign entities.

The Decision further specified that the capital and other costs related to the circuits to be owned by United States entities should be borne by the applicants in the following proportions: AT&T, 86.88%; and the three record carriers (ITT Worldcom, RCA Globcom and WUI), 13.12% in equal shares.

4. At the time of our Decision, the expected participants in the TAT–6 cable system had not arrived at a definitive agreement covering the construction, operation and maintenance of the cable. Since that time the participants had approved such definitive agreement (a copy of which is attached to the instant application), which varies in several material respects from the previous *pro forma* agreement between the participants. These changes have led applicants to file the present application requesting concomitant changes in our Decision.[2]

5. We had noted in our Decision that the CEPT countries had proposed that they acquire an "ownership" in 50% of the TAT–6 cable

[1] We intended that these circuits be authorized to AT&T, separately from the circuits authorized in the preceding paragraphs, so that it could dispose of them by IRU and retain ownership. As will be seen *infra*, these circuits are now proposed to be taken from half circuits assigned to AT&T for service with the U. K., rather than whole circuits to be assigned to AT&T for use with non-CEPT countries. (See para. 8, footnote 9, and paras. 54–56 of our Decision.)

[2] The agreement is at last at least 30 years and is terminable by any party on not less than two years' written notice expiring at the end of the initial period or thereafter.

system. Since that time the TAT–6 participants have agreed on such an approach, with the other 50% to be "owned" by United States participants. Allocations of each 50% ownership interest are proposed to be made among the individual participants in each group in proportion to the amount of circuitry assigned under the agreement to such participant to the number of circuits assigned to its group as a whole. Thus, AT&T would have a 43.99594% ownership, and each of the three record carriers would have a 2.00135 ownership interest.[3]

6. Capital costs, as well as maintenance and operating costs, however, would be divided among the two groups in a different manner, with the Europeans bearing 38.3750% and the United States carriers bearing 61.6250%. Carriers are to share in any net proceeds, on liquidation of the cable system, on the basis of their capital contribution.

7. The assignment of costs is based on the allocation of circuitry to the respective participants; i.e., United States carriers are assigned 61.625% of total circuitry, and European parties will be assigned the remainder. Circuits are to be held on an IRU basis to the extent the percent of circuitry held by a United States carrier exceeds the percent of its cable system ownership with the corresponding ownership being held by the Europeans. In our previous Decision we had included (para. 8) a table showing a tentative agreed-on use of circuitry. The present tentatively agreed on definitive TAT–6 agreement contains the results of a review by the parties of such assignments, which, among other things, reflects our creation of a joint pool of circuits to be held by applicants. These results are shown in the attached table. The circuit numbers in the table are readily reconcilable with those shown in our Decision; however, it may be noted that the six circuits formerly under "nordic" are now apparently distributed among Denmark, Norway and Sweden, and that 223 circuits formerly included among those under "United Kingdom" are now added to the whole circuits to be held by United States carriers.[4]

8. The whole circuits shown on Line 18 in the table attached are intended primarily for use with countries other than those listed, but the carrier may use any such circuit with any country to which it is authorized. The European participants agree that each will make available to the others, and to telecommunications entities not parties to the agreement transit circuit facilities as may reasonably be required to extend circuits from the TAT–6 terminal, on terms no less favorable than those given to other international telecommunications entities for similar transit facilities. With respect to the pool half circuits shown in Column (h) of the table, assignment within the United States is made subject to concurrence by the appropriate European party as to its transfer for service to another country and the type of service for which it is to be used within the assigned country.

[3] The modifications to our Decision made herein will result in capital contributions by the United States carriers at variance with those set out in our Decision, as well as those set out in the proposed definitive agreement.

[4] We had originally indicated that COTC was to acquire a half interest in 21 circuits for use with Spain. It now appears that Spain will acquire the ownership of such circuits and give COTC an IRU in them.

On allocation of a pool circuit, the party to whom the circuit is allocated is to pay the other United States carriers on the basis of depreciated capital cost. The above assignment of circuits is to be reviewed in 1979, and unused circuits will be reassigned in conformance with expected use, subject to appropriate regulatory authorization in the case of United States carriers. Entities, not parties to the agreement, to whom IRU's are given are to be required to participate in circuit assignment reviews. Any party to whom a circuit is assigned may make such circuit available to another telecommunications entity, by other than ownership transfer, subject to concurrence of the party to whom such circuit may be jointly assigned.

9. In our Decision we had authorized (first ordering clause, para. (e)) AT&T to dispose of up to 150 whole circuits in TAT–6 to COTC and to either or both the BPO and the French PTT, until the end of 1979, on condition it have the option to repurchase such circuits at or prior to that time, with such repurchase being concomitant with a simultaneous proportionate reacquisition by COTC of CANTAT–II circuits authorized in our Decision to U.S. carriers. Since that Decision, AT&T, on the basis of negotiations with the BPO and COTC, proposes that such 150 circuits are to be 150 of the 312 circuits jointly held by AT&T and the BPO; that its agreement to dispose of IRU's in its half interest in such 150 circuits extend for the life of the TAT–6 cable agreement; and that AT&T and COTC may, subject to appropriate governmental authorization, agree to the transfer of IRU in any or all such 150 circuits before the end of such period, with an option to the BPO to either retain the eastern end of such circuits or dispose of them to AT&T for service with countries other than the United Kingdom.[5]

10. The CANTAT–II circuits above referred to consisted of up to 150 such circuits we authorized AT&T to acquire from COTC on an IRU basis for service with the United Kingdom and France, and up to 20 such circuits we authorized each of the record carriers to acquire from COTC on an IRU basis for service with European points for the period up to and including 1979. (See Decision, second ordering clause.) AT&T's acquisition of such circuits was conditioned on its disposing to COTC IRU interests in an equal number of TAT–6 circuits referred to above. AT&T, the BPO, and COTC have now agreed that such circuits are to be used for service with the United Kingdom, and that AT&T's period for holding such circuits (to be acquired at proportionate capital cost at the time CANTAT–II becomes operational) last until a new transatlantic submarine facility after TAT–6 becomes operational. At such time they will revert to COTC at depreciated capital cost. However, AT&T and COTC can agree that the grant as to any such circuit be terminated earlier, or later, than specified, subject to appropriate government approval.

11. COTC has agreed that the number of CANTAT–II circuits held by AT&T and the number of TAT–6 held by COTC shall be

[5] We are informed that AT&T and the BPO are holding further discussions which may result in further modifications of the agreement with respect to these circuits. See para. 21 below.

the same, unless otherwise agreed subject to appropriate government approval.

12. AT&T has also agreed that it will use 300 of the 626 whole circuits to be assigned to it under the proposed definitive TAT–6 agreement for service with Israel, with the Israeli Administration acquiring half interests (on a proportionate capital cost basis) in such circuits by IRU starting at the time TAT–6 becomes operational, AT&T, in the application, states that 150 of these half circuits are in the 150 whole circuits it originally had proposed to make available to COTC; however, the BPO recently maintained that it had intended the latter company take IRU's in the AT&T interest in 150 jointly held AT&T/BPO circuits.

APPLICANTS' REQUESTS

13. The subject application requests that the Commission amend its July 7, 1972 Decision to:

a. Authorize AT&T to acquire, on a capital contribution basis, a total of 626 whole circuits in the TAT–6 cable system instead of the 476 whole circuits it is now authorized to acquire, and to make consequent changes in percentages of capital and other costs relating to pool circuits;

b. authorize AT&T to make available to COTC a half interest, on an indefeasible right-of-user (IRU) basis, in up to 150 circuits in the TAT–6 cable for the term of the TAT–6 Construction Agreement unless AT&T and COTC agree to terminate the IRU grant sooner, and subject to further approval of the Commission in the event of such agreement by AT&T and COTC for AT&T to reacquire all or any of such circuits, and to use, at the option of the British Post Office, the reacquired circuits jointly with the British Post Office for service between the United States and the United Kingdom or alternatively for AT&T to reacquire the British Post Office's half interest in the circuits, which circuits will then be used for service between the United States and such countries as AT&T may determine, subject to approval of the Commission;

c. authorize AT&T to acquire from COTC, on an IRU basis, a half interest in 150 voice-grade circuits in the CANTAT–II cable for use in providing jointly with the British Post Office communication service between the United States and the United Kingdom until a new transatlantic submarine facility, after the TAT–6 cable system, is placed in operation, and at that time to relinquish the IRU interest in the circuits to COTC;

d. authorize AT&T to make available to the Israeli Administration, on an IRU basis, 300 half circuits in the TAT–6 cable system for use jointly with AT&T in providing service between the United States and Israel, and to use AT&T's half of such circuits for that purpose;

e. authorize the international record carrier applicants to acquire their IRU interests in the CANTAT–II circuits, and to use such circuits, without limitation to the period to and including 1979 as now provided in the TAT–6 Order; and

f. authorize the applicants to agree that the European parties collectively shall have a 50% ownership interest in the cable portion of the TAT–6 cable system although collectively they will contribute 38.3750% of the capital, operating and maintenance costs of such portion.

DISCUSSION

14. In their initial applications for authorization to participate in the construction and operation of the TAT–6 submarine cable, the joint applicants herein proposed, as had been the case in previous cable projects, that ownership of the cable be based on use. While the Commission had received a message from the Austrian Minister of

Transport, containing a copy of a resolution adopted at the 4th Conference of European Ministers of Posts and Telecommunications held in Vienna in April 1972 which proposed that the eastern half of the TAT–6 cable be owned by an aggregate of European countries, this proposal was not reflected in such applications. In the interest of expediting this project, we acted without awaiting any possible amendments to the applications which might address the view of the European entities. The joint applicants now seek modification of our Decision so as to permit implementation of such proposal.

15. The application for modification now before us proposes that 50% of the ownership of the TAT–6 cable be assigned to the joint applicants in the aggregate and the remaining 50% be assigned to the 16 European countries which have elected to participate in the TAT–6 cable on an ownership basis.[6] The joint applicants further propose that the 50% ownership assigned to them in the aggregate be apportioned among them on the basis of use made of the cable.[7] Under the proposal before us, the joint United States applicants will have in the aggregate 50% of the voting rights and the European parties the remaining 50% in the aggregate. Each individual European or United States party will be assigned its portion of the 50% of the voting rights on the basis of its use of the TAT–6 cable.

16. The proposed assignment of equal shares of ownership in the TAT–6 cable system to the joint United States applicants in the aggregate and the 16 European parties in the aggregate is not based on either initial or ultimate use or capital contribution to the construction of the system. Instead, it is set at this ratio primarily to achieve parity between the voting rights of the United States parties and the European parties. The capital contribution, on the other hand, under the proposed contract is based on the use each party estimates it will make of the cable. Under the current proposal the United States parties will jointly contribute 61.6250% of the construction and operating costs of the cable but will retain 50% of the ownership and voting rights relating thereto.

17. The Commission recognizes that there is merit to the position that all of the entities at the eastern end of the TAT–6 cable should collectively have a 50% ownership and associated voting rights. Such entities as a group will ultimately operate the foreign end of the circuits and collectively contribute 50% of the investment. The proposal before us now, however, does not involve all of the ultimate users at the eastern end of the cable, but includes only the CEPT countries which collectively account for about three-fourths of the projected circuit use at the eastern end. We appreciate the considerations which led the CEPT countries to seek the 50% ownership and voting status; that is, the view that the entities at the eastern end of the cable should

[6] The European countries participating on an ownership basis are Austria, Belgium, Denmark, France, Finland, Germany, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

[7] Applicants indicate, as does the draft contract attached to the subject application as an appendix, that the European parties plan to assign the 50% ownership in the cable assigned to them in the aggregate among the 16 countries on the basis of use made of the TAT–6 cable.

have equal status with those at the United States end as owners and voters. However, the TAT–6 cable is not simply a facility to handle traffic between the United States and Europe, but is the transatlantic portion of a facility to be also used for handling traffic to points beyond the territories of the CEPT countries and even beyond Europe itself to Africa, the Near East and the Middle East, and in the future even beyond. It would appear to us that in the usual course of events all carriers using the eastern end should have the same status vis-a-vis the United States carriers.[8]

18. We recognize, however, the special circumstances involved herein, the initiative of the CEPT countries in the negotiation of the agreement for TAT–6, and the many discussions which preceded the instant contract. Accordingly, we will not interpose any objection to the proposal which would accord the CEPT countries as a group a 50% ownership and voting rights in TAT–6, provided that the United States carriers retain certain of the indicia of ownership, that is, rights in the physical property and the right to dispose of the eastern end of whole circuits to non-CEPT countries which, as the agreement recognizes, shall enjoy transit rights and pay charges substantially similar to those applicable between and among CEPT countries with respect to the use of TAT–6 circuits. We also interpose no objection herein to the proposal that the United States carriers hold indefeasible right of use in those circuits in the TAT–6 cable system assigned in which they invest but do not hold an ownership interest,[9] provided it is clearly specified that such indefeasible right of user carries with it the rights specified herein above in this paragraph and provided further that, as specified in the application and appended contract, on liquidation of the TAT–6 cable system, the joint applicants, as well as the European parties, will share in any net proceeds on the basis of their capital contributions.

19. In its original application for authority to acquire circuits in the CANTAT–II cable system, AT&T requested authority to acquire one-half interests in 150 voice circuits in said cable on an IRU basis until the end of 1979, at which time such interests were to be reconveyed to COTC. It was proposed that AT&T would at that time reacquire its 150 wholly owned TAT–6 voice circuits which it sought to make available to COTC, the BPO and the French PTT for their use in providing service between the United Kingdom and Europe. We authorized AT&T to acquire the requested interests in the 150 CANTAT–II circuits until the end of 1979 and to make available 150 wholly owned

[8] We anticipate that, with respect to any future transatlantic cables, the United States carriers will negotiate from the outset with all entities who will own the foreign end of the cable, so that each such entity may be in position to make a financial contribution, *ab initio*, commensurate with its anticipated use. If there are so many foreign entities involved that the negotiations would become unduly complex, we anticipate, as an alternative, the United States carriers will provide in the basic contract with their foreign partners that, as the United States entities sell off the foreign half of their whole circuits, separately retained ownership and voting rights would be transferred to the purchasers, so that ultimately 50% of the cable would be owned and paid for by entities at the foreign end.

[9] It does not appear from the draft contract appended to the instant application that circuit ownership interests and indefeasible right-of-user interests held are identified with any specific circuitry.

circuits in the TAT–6 cable system to COTC, the BPO and the French PTT. We also limited acquisition of indefeasible rights of user in the interests in CANTAT–II circuits acquired by the record carrier applicants herein to a period terminating at the end of 1979. In their instant application the joint applicants request authority with respect to those CANTAT–II and TAT–6 circuits as set forth in subparagraphs 4 (b), (c) and (e) *supra.*

20. We found in our TAT–6 Decision that CANTAT–II could not be considered a prime source for meeting traffic demands to or from the United States. However, we did find that a reasonable use of that facility for the limited time proposed by AT&T would be useful in assuring diversity of facilities over one of our heaviest international traffic routes. We, therefore, authorized AT&T and the record carriers to make limited use of CANTAT–II circuits until the end of 1979 as proposed by AT&T. AT&T now proposes that it be permitted to make such use of CANTAT–II circuits until a new transatlantic submarine facility, after the TAT–6 cable, is placed in operation. The record carriers request that they be permitted to make use of the CANTAT–II circuits they have been authorized to acquire without limitation as to time.

21. We retain the opinion expressed in our TAT–6 Decision that, while the CANTAT–II cable system cannot be considered as a prime source for meeting traffic demands to or from the United States, limited use of that facility will be useful in assuring diversity of facilities. A consideration inherent in determining the period of time that CANTAT–II will be useful in providing diversity is the availability of additional transatlantic facilities. We originally accepted the AT&T proposal that use of CANTAT–II circuitry until the end of 1979 was reasonable. Since at the time of our Decision we were aware of the possibility that another transatlantic cable would be applied for in the latter part of the decade, we believe that it is now appropriate to permit the use of the CANTAT–II circuits joint applicants have been authorized to acquire until we have reached a decision on any application filed by AT&T or by the joint applicants for a transatlantic submarine facility subsequent to TAT–6 or, if no such application is filed by that date, until December 31, 1980.[10] In either event the joint applicants may apply for such extension of time to make use of their CANTAT–II circuits as they may feel they can justify as being in the public interest.[11]

22. In paragraph 18 above, we noted that, contrary to their original intent, AT&T and the BPO now contemplate that the 150 TAT–6 circuits to be temporarily taken by COTC are to come from circuits jointly assigned to AT&T and the BPO rather than from wholly owned circuits to be assigned to AT&T. We are not interposing any objection

[10] As noted above (footnote 5), we understand negotiations between AT&T and the BPO on this point are still in progress and that the parties may further modify their proposal. To the extent such modified proposal is not covered by our Order herein, we shall consider an appropriate petition for modification on its merits.

[11] We are constrained to grant this relief because of agreements entered into between AT&T and the owners of CANTAT–II for the protection of AT&T in case of a catastrophic failure or degradation of that cable.

to this change in the interest of comity and accommodation with AT&T's British correspondent. However, we believe it necessary to express our concern lest the decrease in the contemplated use of TAT–6 for United States/United Kingdom telephone traffic adversely affect the diversity sought by the parties between primary cable and satellite routes. We would expect that AT&T, a strong proponent of such position, will bear this in mind in connection with its negotiations regarding the ultimate use of TAT–6 circuits if and when AT&T seeks authority to reacquire the western end of these 150 circuits now made available to COTC on an IRU basis.

23. Our circuit allocations in the Decision, as well as herein, will result in no change in the total investment by United States carriers in the TAT–6 cable system. However, since we have allocated investment in the pool circuits between AT&T and the record carriers in the same proportion as we have assigned equivalent half circuits (see Appendix B) to such carriers, and since we have assigned to AT&T 150 additional whole circuits not reflected in our Decision, the investment among United States carriers must be recalculated. Thus AT&T will now contribute 54.225% of the total capital contribution of the TAT–6 cable system or $78,626,250, and the United States record carriers as a group will contribute 7.40% of the total capital costs or $10,730,000.

24. In view of the foregoing, we shall amend the appropriate ordering clauses of our TAT–6 Decision to grant the requests made by the joint applications to the extent discussed above.

25. Accordingly, IT IS ORDERED, that the subject joint application of American Telephone and Telegraph Company, ITT World Communications Inc., RCA Global Communications, Inc., and Western Union International, Inc., IS GRANTED IN PART; and

(A) The first ordering clause of the Memorandum Opinion, Order and Authorization (Decision) herein adopted July 7, 1972, is amended to read as follows:

(a) Applicants are authorized to make capital contributions to the system in the amounts specified in para. 23 herein, with the ownership of the cable portion of the system being held 50% by applicants collectively and 50% by their foreign partners collectively so as to secure equality of voting rights as between the two groups, PROVIDED, HOWEVER, that

(1) circuits in such cable system acquired by applicants in excess of 50% of the total circuitry in the system shall be held by applicants on an indefeasible right of user basis, with applicants having the same rights with respect to the physical property represented by such excess as if they had ownership interests in such excess,

(2) applicants shall have the right to use such circuits as if they had ownership interest in all circuits assigned to them in such cable system, and

(3) ownership allocated collectively to applicants shall be divided among them in proportion to the relation the capital contribution of each bears to the total capital contribution made by all applicants;

(b) AT&T is authorized to acquire on a capital contribution basis 626 whole circuits and 1,849 half circuits in the TAT–6 cable, and to use such circuits to provide the communication services it is now authorized to provide between the United States and Europe and points beyond;

(c) RCA, ITT and WUI are each authorized to acquire on a capital contribution basis 26 whole circuits and 89 half circuits for a total of 78 whole circuits and 267 half circuits, and to use such circuits to provide the communication

services they are now authorized to provide between the United States and Europe and points beyond; and

(d) the remainder of the circuits requested by the U.S. carriers, as shown in para. 59 and Appendix C herein, namely 247 whole circuits and 912 half circuits, shall be held jointly in a reserve pool for subsequent allocation by the Commission upon showing of future needs and concurrence and other costs related to the pool circuits shall be borne by the applicants in the following proportions: AT&T, 87.9966%, and the three record carriers (RCA, ITT and WUI), 12.0034% in equal shares.

(e) When a given applicant acquires an interest, on a capital contribution basis, in any circuit initially allocated to another applicant or acquires one of the circuits in the reserve pool, the reimbursement to the other applicant(s) shall be on the basis of depreciated original cost (or the pro rata accumulated cost of such circuit if the system is not then operational); and

(f) AT&T is authorized to make available to COTC, on an IRU basis, AT&T's interest in 150 of the 312 TAT-6 circuits assigned jointly to AT&T and the BPO.

(B) Subparagraphs (a) and (b) of the second ordering clause of the Decision are amended to read as follows:

(a) AT&T is authorized to acquire on an IRU basis a half interest in up to 150 CANTAT-II circuits and operate them until the Commission's decision on an application for a transatlantic submarine facility subsequent to TAT-6 is issued or the end of 1980, whichever first occurs, subject to the conditions that (1) AT&T and COTC have agreed that COTC will acquire from AT&T an IRU interest in the same number of TAT-6 circuits by the date the TAT-6 cable becomes operational, and (2) AT&T shall at no time thereafter retain or operate a greater number of the CANTAT-II circuits than the number of TAT-6 circuits retained or operated by COTC unless and until the Commission grants authority to do otherwise upon an appropriately supported application;

(b) RCA, ITT and WUI each are authorized to acquire on an IRU basis a half interest in 20 CANTAT-II circuits (for a total of 60 such circuits) for service until the Commission's decision on an application for a transatlantic submarine facility subsequent to TAT-6 is issued or the end of 1980, whichever first occurs, to provide the communication services they are above authorized to provide between the United States and Europe.

(C) AT&T is hereby authorized to assign up to 300 whole circuits it is authorized to acquire to the provision of service between the United States and Israel and, upon compliance with the third ordering clause of our Decision, make available to its correspondent in Israel, on an IRU basis, one-half interests in up to 300 TAT-6 circuits.

(D) All other terms and conditions of the Decision remain the same.

(E) Except to the extent granted hereinbefore, the subsequent joint application of AT&T, ITT Worldcom, RCA Globcom and WUI, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

Appendix A

TABLE

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
						Assigned United States		
European party	A.T. & T.	ITT	RCA	WUI	CTNE	Total	Pool	Total
1. Austria	19	3	3	4		29	20	49
2. Belgium	95	7	7	8		117	61	178
3. Denmark	16	1				17	5	22
4. France	322	15	12	12		361	147	508
5. Finland	11					11	3	14
6. Germany	391	12	15	12		430	165	595
7. Greece	63	1	1	2		67	24	91
8. Ireland	38					38	10	48
9. Italy	237	6	6	7		256	92	348
10. Netherlands	95	5	6	5		111	49	160
11. Norway	16		1			17	5	22
12. Portugal	38	1	1	1		41	16	57
13. Spain	87	10	7	10		114	66	180
14. Sweden	14			1		15	5	20
15. Switzerland	95	10	13	8		126	74	200
16. United Kingdom	312	18	17	19		366	170	536
17. Subtotal	1,849	89	89	89		2,116	912	3,028
18. Whole circuits	626	26	26	26	21	725		725
19. Whole circuits							247	247
20. Total	2,475	115	115	115	21	2,841	1,159	4,000

F.C.C. 73-233

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of REQUEST BY CITIZENS COMMUNICATIONS CENTER For Inspection of Annual Financial Reports	File No. BRCT-64

MEMORANDUM OPINION AND ORDER

(Adopted March 2, 1973; Released March 7, 1973)

BY THE COMMISSION: COMMISSIONERS REID AND WILEY CONCURRING IN THE RESULT.

1. The Commission has under consideration: (a) the Memorandum Opinion and Order (FCC 72-1068) adopted on November 29, 1972; released on December 1, 1972; (b) a "Petition for Reconsideration" [1] and a "Request for Stay" [2] of the above ruling which were filed on December 4, 1972 by Metromedia, Inc. (hereinafter "Metromedia," "KTTV," "the station" or "the licensee"); and (c) a "Response to Petition for Reconsideration" filed on December 26, 1971 by the Citizens Communications Center (hereinafter "CCC," "the petitioners to deny" or "the petitioners") on behalf of the National Association for Better Broadcasting, Action for Children's Television, Mexican American Political Association, and the Fair Housing Council of the San Fernando Valley.[3]

2. The pertinent background of petitioner's request for information is set forth fully in the Commission's Memorandum Opinion and Order issued on December 1, 1972 and in the Executive Director's Ruling of July 24, 1972, and there is no need to restate it here. The only ground urged by Metromedia for reconsideration and stay of the Commission's determination to make the requested information available to the petitioners is the Commission's inadvertent failure to consider Metromedia's Reply pleading.[4] Section 1.115(d) of the rules

[1] The "Petition for Reconsideration" transmits a copy of the licensee's "Reply to 'Opposition to Petition for Review'" submitted on October 5, 1972.

[2] The "Request for Stay" asked for a delay to enable the Commission to consider the arguments made in Metromedia's reply pleading. The Commission has now considered the reply pleading and accordingly there is no longer any necessity to grant the "Request for Stay."

[3] Counsel for Metromedia consented to a late filing of this pleading and petitioners filed a consent motion with the Commission on December 26, 1972 requesting that the Commission permit its Response in the instant matter to be filed a few days late.

[4] This pleading captioned "Reply to 'Opposition for Review'" was timely filed by Metromedia on October 5, 1972 but because of an inadvertent mistake in routing, the pleading did not come to the Commission's attention until after issuance of our ruling denying Metromedia's "Petition for Review" and affirming the Executive Director's action authorizing CCC to inspect the requested financial reports.

provides that reply pleadings may be filed in connection with application for review proceedings and Metromedia was clearly entitled to have its pleading considered in the context of the other pleadings filed in this matter.

3. Contrary to Metromedia's allegations, however, we do not believe that there is anything in its Reply pleading that would warrant a reconsideration of our decision to make the requested 324's available to CCC. We have considered all the arguments presented in Metromedia's Reply and have determined that the arguments it presents are basically no different from those Metromedia originally made to the Executive Director and to the Commission in its "Petition for Review". In addition, the Commission's Order in this matter has specifically considered and responded to every one of the arguments advanced in the "Petition for Review" and restated in the "Reply to Opposition." [5]

4. Further, we believe that the public interest would be served by permitting an early inspection of the requested material. Metromedia's "Request for Stay" points out that under Section 0.461(d)(2) of the rules, the Commission may find ". . . for reasons set forth in the order, that the public interest requires earlier inspection," but that the Commission's Order in this matter did not make such a finding. It is clear now, however, that it would be in the public interest for the Commission to expedite implementation of the instant request for information. Over eight months have elapsed since the petitioners to deny requested this information, and petitioners' request for the annual financial reports was granted in order to enable them to fully support their petition to deny. Until the requested information has been made available to petitioners, the Commission's disposition of the renewal application will be delayed.

5. Accordingly, IT IS ORDERED, THAT the "Petition for Reconsideration," filed on December 5, 1972 by Metromedia, IS DENIED, and that the request for inspection made in the "Response to the Petition for Reconsideration" IS GRANTED. IT IS FURTHER ORDERED, pursuant to Section 0.461(d)(2) of the rules and for the reasons set forth under paragraph 4 of this order, that the "public interest requires earlier inspection." The request for information shall not be implemented until the licensee has been afforded the opportunity to obtain a judicial stay of this order, provided that judicial review is sought and a judicial stay is requested within 30 days of release of this opinion. Arrangements for inspection may be made with the Office of the Executive Director.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[5] We recognize that Metromedia's Reply was directed to specific rebuttal of the arguments in CCC's Opposition, and that our ruling did not address itself to CCC's contention that some of Metromedia's arguments were procedurally deficient because they had not been made below. There is of course no need to consider these arguments now because we dealt with all of Metromedia's arguments on the merits. It should also be noted that petitioners have conceded at page 5 of their "Response for Reconsideration" that they were in error in contending that one of these arguments had not been made below.

F.C.C. 73R-98

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
ALBERT L. CRAIN, HUMBLE, TEX.	Docket No. 19186 File No. BP-17550
ARTLITE BROADCASTING CO., HOUSTON, TEX.	Docket No. 19187 File No. BP-17577
JESTER BROADCASTING CO., NASSAU BAY, TEX.	Docket No. 19188 File No. BP-17579
SPACE CITY BROADCASTING CO., HOUSTON, TEX.	Docket No. 19189 File No. BP-17871
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted March 2, 1973; Released March 7, 1973)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER CONCURRING WITH STATEMENT. BOARD MEMBER NELSON DISSENTING WITH STATEMENT.

1. This proceeding involves four mutually exclusive applications for new standard broadcast stations at Humble, Texas (Albert L. Crain, hereafter "Crain"); Houston, Texas (Artlite Broadcasting Company, hereafter "Artlite" and Space City Broadcasting Company, hereafter "Space City"); and Nassau Bay, Texas (Jester Broadcasting Company, hereafter "Jester"). By Commission Order, FCC 71-321, 28 FCC 2d 381, released March 31, 1971, these applications were designated for hearing on various issues including, *inter alia*, an issue to determine whether the proposals of Crain and Jester will realistically provide a local transmission facility for their specified communities or for another larger community (Suburban Community issue). By Order, FCC 72M-172, released February 7, 1972, Chief Administrative Law Judge Arthur A. Gladstone granted a joint request for approval of agreement, filed by the parties prior to hearing, looking toward grant of the Artlite application and dismissal of the others; publication pursuant to Rule 1.525(b) was not required. Now before the Review Board is the Broadcast Bureau's appeal,[1] filed March 6, 1972, which challenges the Judge's dismissal of the Jester application without requiring publication.[2]

[1] Also before the Board are oppositions, filed January 10, 1973, by Jester, Artlite, Crain and Space City; a supplement to opposition, filed January 15, 1973, by Jester; and a reply, filed January 17, 1973, by the Broadcast Bureau.

[2] The proceeding is before the Board on remand pursuant to Commission Order, 38 FCC 2d 515, released December 8, 1972. In a previous Memorandum Opinion and Order, 33 FCC 2d 893, released March 9, 1972, the Board had dismissed the Bureau's appeal on the grounds that it did not comply with the procedural requirements of Rule 1.302. In its remand Order, the Commission set aside the Board's holding, waived the provisions of Rule 1.302 and remanded the Bureau's appeal to the Board for a ruling on the merits.

2. In his ruling published February 7, 1972, the Chief Administrative Law Judge held that publication by Crain was unnecessary because Humble, Texas was a "captive enclave" of Houston, could not grow geographically, and was not a "developing and deserving" community within the meaning of the *Policy Statement on 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 FCC 2d 190, 6 RR 2d 1901 (1965). The Judge reached a like conclusion with respect to the Jester proposal. He held that, while Nassau Bay was not a captive enclave of Houston, it was so situated as to make it likely that any applicant for Nassau Bay would have to serve the "Clear Lake area",[3] as well as Houston. Indeed, such an application, the Judge reasoned, would in actuality be designed to serve the Houston Metropolitan Area "as a matter of technical and economic necessity." The Judge went on to note that the need for a first local outlet at Nassau Bay was satisfied by the existence of FM Station KLYX in Clear Lake City. The Judge concluded from the showing with respect to the integration of Nassau Bay into the Clear Lake area that the Jester application was really one designed to serve the Clear Lake area, which has a transmission facility, and not merely the community of Nassau Bay. Finally, the Judge distinguished *Sundial Broadcasting Co., Inc.*, 18 FCC 2d 86, 16 RR 2d 459 (1969), upon which the Bureau placed principal reliance, on the grounds that, unlike here, the applications in that case were for communities in distinct metropolitan areas, and there was no significant service overlap of the two proposals.

3. In its appeal, the Bureau takes the position that Nassau Bay, unlike Humble, is a developing and deserving community within the meaning of the Commission's 1965 *Policy Statement*, *supra*.[4] Appellant asserts that the Presiding Judge, in effect, concluded that no applicant for Nassau Bay could rebut the Suburban Community presumption, and that neither the size and location of Nassau Bay nor the fact that Jester surveyed the needs of persons residing in the Clear Lake area and proposed to serve that area support his conclusion.[5] The Bureau argues that the Jester application specified Nassau Bay as its station location, and that neither the Judge nor Jester can now claim that the application is in reality one for the Clear Lake area or the Houston Metropolitan Area (citing *Sundial Broadcasting Co., Inc.*, *supra*, and *Fire Cities Broadcasting Company, Inc.*, 35 FCC 501 (1963)). Appellant also argues that the Judge erred in not according due significance to the fact that Nassau Bay has no local transmission

[3] The Judge noted that the designation Order states that the Nassau Bay application contains a population estimate for this area "of which Nassau Bay is apparently a part." (Paragraph 11 of the designation Order.) The area population given, the Judge noted, was 35,000, whereas, the population for Nassau Bay was listed as 3,000. The Judge further pointed out that the 1970 U.S. Census does not list these communities separately from Webster District in which they are located, but shows Webster District as part of the Houston Urbanized Area and SMSA. The applicants argued before the Judge that the Jester application treated the needs of Clear Lake City and Nassau Bay as substantially identical and proposed to serve the entire Clear Lake area. No further clarification of this point is provided in the pleadings before the Board.

[4] The Bureau notes that material in the Jester application indicates that Nassau Bay is likely to grow in size and population.

[5] The Bureau points out that survey efforts beyond the community of license are in compliance with question and answer 6 of the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971).

service. Even if the Clear Lake area FM station is considered as providing a transmission service to Nassau Bay, the Bureau continues, the need for a competitive voice outweighs the need for an additional outlet to Houston since Houston is already well-served. Finally, the Bureau contends, even though the remaining applicant, Artlite, will provide a reception service to Nassau Bay, the objectives of 307(b) require that other parties be afforded the opportunity through publication to provide Nassau Bay with its first local outlet.[6]

4. In opposition,[7] Jester takes the position that Nassau Bay is akin to Humble in that it is locked in geographically within the Houston SMSA with little or no potential for growth. Specifically, Jester asserts that Nassau Bay constitutes an area of 756 acres and is restricted from expansion on all sides by entities or bodies of water. The applicant submits a land map of the area in support of this assertion.[8] Jester also alleges that the most recent 1972 U.S. Census figures show that Nassau Bay is declining in population. Jester submits that the size and location of Nassau Bay are significant to a 307(b) determination and alleges that there is a population ratio of 325 to 1 between Houston and Nassau Bay and, furthermore, that its proposal would place a 5 mv/m signal over 70% of Houston and a 2 mv/m signal over the remainder. In these circumstances, Jester submits that a reasonable conclusion may be drawn that Nassau Bay is so integrated into the Houston metropolitan area that no applicant could rebut the Suburban Community presumption. Jester also disagrees with the Bureau's reliance on *Sundial Broadcasting Co., Inc., supra*, and attempts to distinguish that case as involving the dismissal of an application which would have deprived the community of Parma of all service, both transmission and reception. In this case, Jester argues, 307(b) preferences for Nassau Bay are not significantly involved or, at most, the objectives of 307(b) are not unduly impeded (citing *Huntington Broadcasting Co.* v. *FCC*, 192 F. 2d 93, 7 RR 2031 (1951); and *Howard M. McBee*, 19 FCC 2d 800, 802, 17 RR 2d 351, 354–5 (1969)). With specific regard to the latter contention, Jester alleges that all areas and populations that would receive 2 mv/m service from Jester will receive such service from Artlite, and that the same is true for 0.5 mv/m service with the exception of small areas, none of which is underserved. Moreover, Jester contends, the surviving Artlite proposal represents a more efficient use of the frequency than that proposed by Jester and would extend a 5 mv/m signal over all of the communities specified by Jester. For all these reasons, Jester concludes, dismissal of its application would not unduly impede the objectives of 307(b).[9]

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[6] The Bureau disagrees with the Judge's interpretation of *Sundial Broadcasting Co., Inc., supra*. It argues that the significant factor in that case was not the loss of an additional reception service, but the fact that the withdrawal of the Parma application would result in a loss of a transmission service to that community.

[7] Artlite joins in and supports Jester's opposition.

[8] In its supplement to opposition, Jester states that the land area described on its map was incorporated on April 2, 1970, and argues that this adds to Nassau Bay's lack of growth potential.

[9] In his opposition, Crain supports Jester's pleading, and opposes the Bureau's position for the reasons set forth by the Judge, for the reasons stated in his opposition to the Bureau's application for review, filed with the Commission, and because he believes the Bureau's support of dismissal of the Humble application and opposition to dismissal of the Jester application are inconsistent. In its opposition, Space City notes the filing of the Jester pleading and, in order to avoid unnecessary repetition of arguments, simply supports the Judge's ruling.

5. In reply, the Bureau reiterates its assertion that the objectives of Section 307(b) would be disserved by a dismissal without publication of Jester's application, and contends that Jester's arguments in opposition are in conflict with the reasoning of the Chief Administrative Law Judge. Specifically, the Bureau points out, the Judge allowed dismissal without publication because he believed the area was already served by a transmission facility (a Clear Lake City), whereas Jester is of the view that Nassau Bay's geography and population characteristics disqualify it as a developing and deserving community. The Bureau asserts its disagreement with both positions and urges that the Board grant its appeal.

6. The Bureau's appeal will be granted. The Judge reasoned and the applicants argue before us that publication is unnecessary because neither Jester nor any other applicant for a facility at Nassau Bay could successfully rebut the presumption that it is, in fact, an applicant for a Houston area station. We disagree. The Commission's *Policy Statement* on 307(b) makes clear that the presumption is rebuttable but, without an adequate record, and based merely on the allegations before us, we cannot conclude that the situation in this case presents an impossible burden for any Nassau Bay applicant. The arguments that Nassau Bay is locked in geographically and not growing in population are disputed and inconclusive. Indeed, in seeking to avoid specification of a Suburban Community issue against it, Jester argued before the Commission that Nassau Bay was inadequately served by stations in other communities and that sufficient resources existed in that community to provide revenues without depending on Houston. Jester specifically cited growth in the number of business establishments and increase in public school enrollment to establish the self-sufficiency and independence of its community. See paragraphs 12 and 14 of the designation Order. Furthermore, Jester's citation of coverage and population data relative to Houston simply reflects the reasons for designation of a Suburban Community issue to begin with. Given these factors, we believe it is premature to conclude that neither Jester nor any other applicant could establish that Nassau Bay is a deserving suburban community.

7. Both the applicants and the Bureau rely upon the holdings in *Sundial Broadcasting Co., Inc.* and *Howard M. McBee*, *supra*, which involved dismissing applicants against whom Suburban Community issues had been specified. In *Sundial*, the Commission ordered publication by the dismissing applicant for a facility at Parma, Ohio. The Commission held that because publication might evoke a new applicant which could rebut the presumption; because Parma had no local transmission service; and because Parma and Warren (the community proposed by the surviving applicant) had separate and distinct 307(b) needs, publication was required. These circumstances approximate our own facts and require a like result. Nassau Bay is without a transmis-

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sion service,[10] is alleged by Jester to be independent of Houston, and dismissal without publication would deprive that community of an opportunity for a realistic local transmission service. The factors relied upon by the Judge and the applicants in distinguishing *Sundial* are nowhere articulated by the Commission in that case. In *McBee*, the Board did not require publication by the dismissing applicant, but there the surviving applicant's community and the county in which it was located were without a transmission facility, whereas the other community was served by nearby stations. This is in stark contrast to the Houston metropolitan area, in the case before us, which is well-served. In addition, as the Bureau points out, it may also be argued that the need for a first competitive voice in the "Clear Lake area" would outweigh the need for an additional voice in Houston.[11] Finally, the coverage contours referred to by Jester simply reflect that Artlite would provide a reception service to Nassau Bay, but do not answer the crucial point that Nassau Bay will be deprived of an opportunity for a first local transmission service. As stated in the *McBee* case, the Commission has held that the question of publication should be considered without regard to the Suburban Community presumption, but rather on the basis of the communities originally specified by the applicant. Applying this principle, and absent a hearing, the Board is simply not convinced that the choice of a Houston applicant over an applicant for Nassau Bay under a 307(b) determination would not unduly impede the objectives of Section 307(b). In sum, it is our view that dismissal of the Jester application without publication would result in the abandonment of a community for which another applicant could conceivably provide realistic service and would frustrate the purposes of Rule 1.525. Therefore, we shall grant the Bureau's appeal and we would order publication but for the fact that the agreement of the parties contains a provision at paragraph 3 thereof to the effect that it will be rendered null and void should publication be required of a dismissing applicant.[12] Therefore, we shall deny the joint request for approval of the agreement.

8. Accordingly, IT IS ORDERED, That the appeal from presiding officer's final ruling, filed March 6, 1972, by the Broadcast Bureau, IS GRANTED; and

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[10] Jester specified Nassau Bay as the community applied for, not Clear Lake City, the Clear Lake area, the Houston metropolitan area, or some other community. Without amendment, the application must be treated as one for Nassau Bay, not the other areas. *Cf. Risner Broadcasting, Inc.*, 20 FCC 2d 790, 17 RR 2d 1215 (1969); *Five Cities Broadcasting Co., Inc.*, 35 FCC 501 (1963). It follows, therefore, that, absent adduction of programming evidence, reliance by Jester and the Judge on the facility at Clear Lake City as providing a transmission service for Nassau Bay was misplaced. In addition, the Commission records establish that the antenna of FM Radio Station KLYX is located in Houston. By action of February 28, 1972, KLYX was authorized to change "studio and remote control location" to Houston subject, *inter alia*, to the origination of a majority of KLYX's programs, exclusive of recorded music programs, from its main studio in Clear Lake City. On June 7, 1972, KLYX was authorized to identify as "Clear Lake City-Houston". The current KLYX license (BLH-5372) specifies the main studio location at 2929 S. W. Freeway, Houston, Texas.

[11] The other authority relied upon by Jester is equally inapposite. *Huntington Broadcasting Co. v. FCC*, *supra*, preceded both the Suburban Community *Policy Statement* and the adoption of the publication requirements of Rule 1.525; the holding therein is not applicable to the situation before us.

[12] We need not address the situation in Humble, Texas, since our determination that publication of dismissal of the Nassau Bay application is required renders the agreement null and void.

9. IT IS FURTHER ORDERED, That the Chief Administrative Law Judge's Memorandum Opinion and Order, FCC 72M–172, released February 7, 1972, IS SET ASIDE; and

10. IT IS FURTHER ORDERED, That the joint request for approval of agreement for dismissal of applications, filed September 1, 1971, by Albert L. Crain, Artlite Broadcasting Company, Jester Broadcasting Company, and Space City Broadcasting Company, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

CONCURRING STATEMENT OF BOARD MEMBER SYLVIA D. KESSLER

I concur in the result only of the Board's opinion here. Since the Commission's *Report and Order* (FCC 73–220) (Docket 18651), *In the Matter of Amendment of Part 73 of the Commission's Rules, Regarding AM Station Assignment Standards*, etc., was just recently released on February 28, 1973, the pleadings here, having been filed weeks prior thereto, could not have reached the basic question of the effect, if any, of these new rules and policies on the disposition of the subject matter; nor could the pleadings have reached the more specific questions posed in Board Member Nelson's dissenting statement. For this reason, I have not reached these questions in resolving the subject matter. *In my view*, if the parties desire to address themselves to these questions, they may do so by the filing of appropriate petitions for reconsideration—addressed to the Board—thereby protecting all of their due process rights. Perhaps an alternative course by the Board, *viz.*, a Board order requesting the parties to address themselves to the questions, if any, raised by the new rules and policies would have resulted in a more orderly and efficient dispatch of the Board's business, as compared with its action here; however, it must be apparent that a majority vote could not prevail for this alternative course of procedure.

DISSENTING STATEMENT OF BOARD MEMBER JOSEPH N. NELSON

I dissent from the denial of the joint request on the grounds that (1) the petitioners have been denied due process by the Board's failure to afford petitioners the opportunity to invoke and to be heard with respect to the Commission's *Report and Order* (FCC 73–220) Docket 18651, released February 28, 1973, *In the Matter of Amendment of Part 73 of the Commission's Rules, Regarding AM Station Assignment Standards, etc.;* (2) the petitioners' appellate rights have been adversely affected since they have been denied the opportunity to invoke said *Report and Order* in any application for review hereafter presented to the Commission; (3) petitioners have been denied the opportunity to show that the required publication would be a vain act since, under the provisions of said *Report and Order*, it appears that no application by a new applicant for Nassau Bay would be acceptable for filing; (4) petitioners have been denied the opportunity to plead with respect to the question whether, in light of said *Report and Order*, any applicant can overcome the presumption under the *Suburban*

Community Policy; and (5) the petitioners have been denied the opportunity to plead with respect to the effect of the *Report and Order*, when considered with other factors, on the question whether a grant of the request "would unduly impede achievement of a fair, efficient and equitable distribution of radio service" as set forth in Section 1.525 of the Rules.

In light of all of the above, I would afford the parties herein the opportunity to submit further pleadings before considering the merits of the joint request.

F.C.C. 73-219

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of DUPAGE COUNTY BROADCASTING, INC., ELMHURST, ILL. HOWARD L. ENSTROM AND STANLEY G. ENSTROM D.B.A. CENTRAL DUPAGE COUNTY BROADCASTING CO., WHEATON, ILL. For Construction Permit	Docket No. 16965 File No. BP-16292 Docket No. 16966 File No. BP-16465

DECISION

(Adopted February 21, 1973; Released March 1, 1973)

BY COMMISSIONER HOOKS FOR THE COMMISSION: COMMISSIONER JOHNSON AND H. REX LEE NOT PARTICIPATING; COMMISSIONER WILEY CONCURRING IN THE RESULT.

APPEARANCES

Morton L. Berfield, on behalf of DuPage County Broadcasting, Inc., *Robert W. Coll*, on behalf of Central DuPage County Broadcasting Company; and *Thomas B. Fitzpatrick*, *Michael W. Faber*, and *Philip V. Permut*, on behalf of the Chief, Broadcast Bureau.

BACKGROUND

1. This proceeding involves the mutually exclusive applications for a construction permit for a new Class II standard broadcast station on 1530 kHz filed by DuPage County Broadcasting, Inc. (DuPage) of Elmhurst, Illinois, and Central DuPage County Broadcasting Co. (Central) of Wheaton, Illinois.[1] Both applicants propose a daytime only operation utilizing a directional antenna system, with DuPage proposing a power of 250 watts and Central proposing a power of 500 watts.

2. By a Memorandum Opinion and Order, 5 FCC 2d 577, adopted November 2, 1966, we designated these applications for hearing. Thereafter, in an Initial Decision, 19 FCC 2d 259, issued July 23, 1968, Administrative Law Judge Isadore A. Honig proposed to grant DuPage's application on Section 307(b) grounds because of Elmhurst's greater need for a new transmission service. The Review Board affirmed Judge Honig's recommendation in a Decision, 19 FCC 2d 250,

[1] Both Elmhurst and Wheaton lie in DuPage County which is due west of Cook County (Chicago). Elmhurst is 4.5 miles and Wheaton is 13 miles from Chicago, and they are both part of the Chicago Urbanized Area.

released August 29, 1969. Previously, in a Memorandum Opinion and Order, 16 FCC 2d 899, released March 24, 1969, the Review Board had refused to grant a petition to reopen the record and enlarge the issues filed by Central. However, by a Memorandum Opinion and Order, 21 FCC 2d 395, released February 13, 1970, we vacated the Board's Decision and remanded this proceeding to Judge Honig for further hearings on three new issues.[2]

3. Central's request for a further hearing was founded upon the following circumstances: Frank Blotter, who is president, director, and 51% stockholder of DuPage, was also the president, director, and 26.7% stockholder of Canyon Broadcasters, Inc., licensee of daytime only standard broadcast Station WCKD, Ishpeming, Michigan. During the fall of 1967, Blotter requested authorization for WCKD to sign off one hour later than the time specified in its license, due to the impact of the Uniform Time Act on its service area. While Blotter's request was denied in January, 1968, Central alleged that WCKD, in fact, signed off late during the months from November, 1967, through January, 1968, and again during November and December, 1968. Since the repetition of the improper sign off practice suggested that it was willful or the result of extreme carelessness, a substantial question was raised as to whether Blotter should be entrusted with a second broadcast facility. However, our remand order noted that there was no basis for review of the Board's Section 307(b) determination and that there would be no relitigation of that question.

4. In a subsequent Memorandum Opinion and Order, 23 FCC 2d 22, released May 15, 1970, we denied DuPage's petition for reconsideration of our remand order, but we did clarify the scope of the new issues. In this regard, we said that the crucial question to be determined in the remand hearing was whether DuPage could be prospectively expected to exercise that degree of responsibility required of a licensee and that evidence relating to the steps proposed to be taken by DuPage to insure future compliance with our rules would be relevant to a resolution of this question. For this reason, we stated that DuPage would be allowed to introduce such evidence, as well as evidence showing that WCKD's violations were "purely accidental or unavoidable, or that other mitigating circumstances were present." We further held that, "if it appears from all the relevant facts and circumstances that DuPage can be expected to operate responsibly its proposed station, then DuPage's application may be granted." 23 FCC 2d at 26.

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[2] The issues are:

(a) To determine all of the facts and circumstances surrounding the operation of station WCKD at Ishpeming, Michigan, under the management of Frank Blotter, with particular respect to operation later than the hours specified in the station license and with excessive presunrise power during the months of November and December 1967, and January, November, and December 1968.

(b) To determine in the light of the facts developed under issue (a) whether DuPage County Broadcasting, Inc. of which Mr. Blotter is the principal stockholder, may reasonably be expected to exercise diligently that degree of licensee responsibility required of the operator of a broadcast facility and whether the public interest would be served by permitting Mr. Blotter to acquire an interest in an additional broadcast authorization.

(c) To determine in the light of the evidence adduced pursuant to the foregoing issues what disposition of this proceeding would best serve the public interest, convenience and necessity.

5. After the further hearing was completed, Judge Honig released a Supplemental Initial Decision, FCC 71D–62, on September 17, 1971, in which he concluded that DuPage's application should be denied. DuPage filed exceptions to the Supplemental Initial Decision,[3] and we heard oral argument, *en banc*, on September 7, 1972, Judge Honig's findings of fact are substantially correct, and, except as modified herein and by our rulings on exceptions which are attached as an Appendix, they are adopted. However, we do not agree with Judge Honig's conclusions, and accordingly, the reasoning set forth herein will be substituted for that of the Supplemental Initial Decision.

SUMMARY OF FACTS

6. Frank Blotter first began his career in broadcasting in 1932, and for most of the time since that year, he has been associated at one time or another with the ABC, CBS, or NBC Radio Networks as well as individual stations. During his years with the networks, Mr. Blotter played a part in the development, writing, production or direction of such programs as *Ma Perkins; Road of Life; Jack Armstrong; Public Enemy Number One; Fibber McGee and Molly; Beat the Band; Carnation Contented Hour;* and *Don McNeil's Breakfast Club.*

7. When Canyon acquired WCKD, then identified as WJAN, in 1965, it had been off the air for sometime, and the station required an almost complete technical reconstruction before service could be commenced by Canyon. To perform this reconstruction, Canyon hired Wesley J. Larson who had a diversified background as a reporter, salesman, miner, librarian, technical writer-librarian and electronic equipment repairman in the Army Signal Corps during World War II. He has a First Class Radiotelephone Operator's license and at one time owned a contract engineering business, which took care of transmitting and receiving equipment for such clients as Sawyer Air Force Base in Michigan. Larson also worked intermittently at WLUC–TV in Marquette as a transmitter engineer or shift engineer, and in addition he served as a part-time engineer on a contract basis at WJAN doing repair work on audio equipment. Subsequently, he worked for WJAN as an engineer and later as an announcer. When WJAN went off the air in early 1965, Larson went to work for Station WPJD, the only other broadcast facility in Ishpeming.

8. In the day-to-day operation of WCKD, Blotter concentrated upon programming, selling, maintaining community relations, personnel management and administration, which were his areas of expertise. It was difficult to make WCKD a viable operation for several reasons. First, Ishpeming has a population of less than 9,000 persons, and there was already an existing full time AM station when WCKD went on the air as a daytime only operation. Second, the prior financial failure of WJAN and its long absence from the air made it difficult to revive WCKD. This situation was further aggravated by the fact

[3] DuPage filed exceptions and a brief in support of its exceptions and request for oral argument on November 12, 1971, and an errata on November 18, 1971. The Broadcast Bureau filed a statement in support of the Supplemental Initial Decision on October 13, 1971, and a reply to DuPage's pleadings on November 26, 1971. Central filed a reply to DuPage's pleadings on December 23, 1971.

that Ishpeming did not have a strong economy, making it difficult to obtain sufficient advertising revenue to render the station profitable. For example, WCKD had a profit of approximately $2,000 in 1967, but it had a loss of approximately $5,000 in 1968.

9. For the technical operation of the station, Blotter, who is not an engineer,[4] relied very heavily upon Larson who was general manager, morning announcer and chief engineer. It was Larson's duty to instruct the part-time personnel, primarily high school and college students, in their duties, the technical aspects of which involved turning on the equipment, signing on the station, adjusting power output when presunrise operation was in effect, signing off and log keeping. As an announcer, Larson worked Monday through Friday from just prior to sign-on to 11:30 a.m. His routine in the early morning was to turn on the transmitter and reduce power from 5,000 watts to 500 watts during pre-sunrise operation, to broadcast from sign-on to 11:30 a.m., to take any measurements required by our rules, and to make corrections for any readings which were not in accord with specified figures. In addition, he received police reports and weather-caused emergency announcements such as school or road closings. Larson was generally at the station alone until approximately 9:00 a.m.

10. WCKD's license, issued in 1965, and the renewal thereof in 1967, specified daytime hours of operation in Central Standard Time (CST) from November, 1965, to April 27, 1969, although the customarily accepted time for Ishpeming had been Eastern Standard Time (EST) since 1946. During this period, in order to conform to the locally accepted time, WCKD converted its license time, expressed as Central Standard Time, to Eastern Standard Time by adding an hour to the times specified in the license. When the Uniform Time Act became effective in April, 1967, it had no immediate impact on WCKD's operation, since the Central Daylight Time specified by the Uniform Time Act for Michigan's Upper Peninsula was the same as the locally accepted Eastern Standard Time.

11. However, with the approach of the change from Daylight to Standard Time in October, 1967, controversy arose in the Upper Peninsula whether the new Central Standard or the existing Eastern Standard Time should be observed. Various governmental agencies and local enterprises decided to adopt differing policies. Thus, WCKD had to decide whether to follow its prior custom of using Eastern Standard Time or to observe Central Standard Time. Because certain local sign off times were considered to have become customary in Ishpeming, Blotter, without being aware of whether the station was observing Central or Eastern Standard Time, decided to continue using the previous sign off times as a service to the area.

12. Therefore, on October 18, 1967, when Blotter was in Washington, D.C., for a hearing in the earlier phase of this proceeding, he talked with several staff members of our Broadcast Bureau concerning a possible waiver of WCKD's licensed sign off time. Blotter testified that from these conversations he got the impression that obtaining the

[4] While he does have a third-class endorsed license, Blotter possesses no particular engineering background or training.

waiver was a simple matter of filing a letter requesting such a waiver and that he could commence signing off one hour late without waiting for the request to be granted. Because of this understanding, Blotter did not consult with counsel regarding his request and on October 25, 1967, he wrote a letter to the Broadcast Bureau, seeking a "one hour waiver attachment" for WCKD's license without specifying whether the waiver request was for sign on or sign off times. Subsequently, Blotter received a telegram from the Chief of the Broadcast Bureau denying WCKD a one hour sign on waiver. Blotter wrote the Bureau again on November 2, 1967, pointing out that WCKD was in fact seeking a sign off waiver.

13. By a letter dated January 19, 1968, from the Chief of the Broadcast Facilities Division of the Broadcast Bureau, Blotter was informed that his waiver request could not be granted because of the provisions of Sections 1.542(e) and 73.87 of our Rules. Blotter received the letter in Ishpeming on or about January 26, 1968, and promptly took steps to comply with the terms of WCKD's license by informing the staff that license time as expressed in Central Standard Time would be followed. However, it appears that his instructions were misunderstood, and the station signed off at the time specified for February, or 45 minutes late, during the last five days of January. In addition, during the period from October 30, 1967, to January 25, 1968, due to Blotter's mistaken conception of the effect of his waiver request, WCKD generally signed off one hour late.

14. From February 1, 1968, through April 29, 1968, WCKD signed off on time. With the advent of Daylight Savings Time on April 28, 1968, however, WCKD began to sign off early. This practice continued until October 27, 1968, when, with the return to Central Standard Time, WCKD generally signed off one hour late for the remainder of 1968.[5] According to Blotter the late sign offs resumed in November, 1968, because the program logs for that month were prepared using sign on and off times from the program logs used in November, 1967. The secretary who prepared the logs was unaware of the fact that WCKD had signed off improperly in 1967 and thus repeated the error of the past year by inserting incorrect sign off times in the current program logs.

15. On November 25, 1969, we issued a Notice of Apparent Liability, FCC 69-1301, against WCKD, which recited the facts concerning the late sign offs during the months of November and December, 1967, and January, November, and December, 1968. After considering all of the circumstances, we concluded that the station should be assessed a forfeiture of $1,000 for the violations occurring within one year preceding the issuance of the Notice of Apparent Liability. The forfeiture was paid by WCKD on December 12, 1969, and this matter has not been given any further consideration in conjunction with the operation of Station WCKD since that time.

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[5] Central claims that Blotter was the operator on duty when the late sign off occurred on December 17, 1968. However, it appears that a typographical error was made in the parties' stipulation 4, upon which Central relies, and that Blotter was in fact the operator on duty only on December 17, 1967

16. There is no evidence that Blotter or anyone else at WCKD made a conscious decision to sign off late in November and December, 1968. Blotter was unaware that the station was signing off late during this period until he was advised of the contents of Central's petition raising this matter by his counsel, on December 31, 1968, at which time Blotter promptly took action to correct the situation. There is no allegation of any late sign off since that date. Due to the controversy generated in the Upper Peninsula by the passage of the Uniform Time Act, several petitions were filed with the Department of Transportation seeking to have the Upper Peninsula placed in the Eastern Time Zone. On April 27, 1969, the Upper Peninsula having been officially moved into the Eastern Time Zone, WCKD's license was changed to specify Eastern Standard Time in accordance with that action.

17. WCKD did not benefit economically from the late sign offs. During the times when WCKD remained on the air longer than authorized, there were relatively few commercial announcements, and these few could easily have been scheduled during the licensed hours of WCKD's operation. For the five complete months that WCKD operated overtime, the station averaged slightly more than six commercial minutes per hour during license hours and slightly less than six commercial minutes per hour during the excess hour. Blotter testified that advertisers on WCKD very rarely expressed a preference for spot announcements to be placed at any particluar time but when they did express a preference, it was usually for a time during Larson's morning show. Blotter further stated that he could not recall any advertiser requesting that a spot announcement be carried in the late afternoon.

18. In addition to these facts, the record also establishes that the station was guilty of other infractions of our Rules and the terms of its license. Thus, on different occasions during the years 1967 and 1968, WCKD engaged in premature presunrise operation, used presunrise power after sunrise, omitted "carrier on" entries, employed daytime power before sunrise, and operated with excessive power. On May 7, 1968, Station WCKD was inspected by a Commission engineer. Subsequently, an Official Notice of Violation was issued on May 21, 1968, listing a number of apparent violations. Blotter responded to that Notice on June 4, 1968, and submitted the station's operating logs for a period involving the months of March, April, and May, 1968, pursuant to the Commission's request.

19. By letter of December 19, 1969, WCKD's logs were returned to the station. With the exception of a reference to operation with full power prior to the time specified in WCKD's license in the Notice of Apparent Liability discussed in paragraph 15, *supra*, no further action was taken against the station in connection with these matters. On June 30, 1971, we granted a renewal of the license under which WCKD had been operating since October 1, 1967, and authorized the assignment of the license to Taconite Broadcasting Corporation, without any further consideration of the foregoing matters. See FCC 71-683, released July 7, 1971.

20. DuPage submitted its proposal for the manner in which it intends to operate its new station as an exhibit in the remand proceeding.

Attached to this exhibit are the biographies of Frank Blotter and his sister, Lois Blotter, the two principals of DuPage, and of Glenn E. Webster, the intended full time Technical Director-Chief Engineer. Frank Blotter will serve as general manager with general supervisory responsibility over the programming, sales and engineering departments. Lois Blotter will fill the position of office manager and have supervisory responsibility for matters concerning finances, mail, state and federal reports, personnel and community relations. Miss Blotter has had broad experience in business administration as she has been a wage earner since 1928, and an employee of the Peoples Gas Light and Coke Company of Chicago for 40 years. Since 1952, she has been Secretary to the Chairman of the Peoples Gas System and Office Manager of the Chairman's Division. In her various capacities with the Peoples Gas Light and Coke Company, Miss Blotter has had extensive dealings with state and federal regulatory agencies.

21. Mr. Webster has held a First Class Radiotelephone license for over 40 years, has a B.S. degree in electrical engineering, and has been a consulting engineer in the communications field since 1929 when he supervised the construction of pioneer radio stations. Since 1962, he has been the president and owner of Webster Engineering Company, which is engaged in consulting engineering and management services for many branches of the communications industry throughout the Midwest. His organization designs, develops, and in some cases, actually installs the complete station or system (radio, television, CATV, etc.) on a turn-key basis. Webster will be responsible for the performance of specific written duties concerning all aspects of the day-to-day technical operation of the station. In light of the fact that WCKD has been transferred to a group with which Blotter has no connection, he has no enterprise that will detract from the time he can spend at the Elmhurst operation should DuPage's application be granted, and Blotter has stated that he will devote full time to the management of the proposed Elmhurst station.

CONCLUSIONS

22. As we noted initially, this proceeding was remanded, in light of the possibility that WCKD's sign off practices were willful or the result of extreme carelessness, for a further hearing to determine whether DuPage should be entrusted with this new broadcast facility. At the same time, we made it clear that DuPage's application would be granted if the record established that DuPage could be expected to operate its proposed station responsibly. Thus, the question here is simply whether there is sufficient evidence to demonstrate that DuPage will be able to operate this proposed station in a proper manner.

23. After considering the entire record, we are convinced that the late sign offs at Station WCKD did not result from an intentional disregard for our regulations. Rather, it appears that the first series of late sign offs, when WCKD continued to use the customary sign off times as a service to its listening area, occurred because of Blotter's misunderstanding of the effect of his request for waiver of the sign off requirements expressed in WCKD's license. As to the second series

of late sign offs which commenced with the change from Daylight to Standard Time in the fall of 1968, Blotter testified that the late sign offs occurred because of a secretary's error in copying the times used on the logs for the previous year. When Blotter's unimpeached testimony that he was not aware of this practice until it was brought to his attention as a result of Central's pleading is considered in light of the continuing controversy in WCKD's service area about the time change, it appears that a reasonable explanation has been provided for this unfortunate series of events.[6]

24. Turning to the circumstances surrounding the remaining deficiencies in the operation of Station WCKD, it should be noted first that this was Blotter's initial experience as a principal of a broadcast facility. The record also shows that most of the rule infractions occurred prior to the inspection of the station on May 7, 1968, and that they were often the result of problems associated with the resumption of service by a silent station in a small market, using inexperienced, part-time personnel. More importantly, however, although the record was not closed in this proceeding until March 19, 1971, there is, with but one minor exception,[7] no evidence of any violation of our requirements after January 1, 1969. In spite of being subject to close scrutiny by both Commission personnel and Central, it appears that Station WCKD's operation during a period of time in excess of two years involved no significant transgression and that Blotter has thus learned a lesson from the shortcomings which had been pointed out in his earlier activities.

25. With respect to its present application, DuPage has set forth a comprehensive and detailed plan for the technical operation of its proposed Elmhurst station, which will be more sophisticated than anything ever proposed for Station WCKD. DuPage's unimpeached written proposal details how responsibilities will be delegated among the officers and employees. Each of the three principal staff members—Frank Blotter, Lois Blotter and Glenn Webster—will work in the areas in which their expertise is the greatest. Frank Blotter will be the general manager, primarily concerned with programming. His experience throughout his broadcast career has prepared him well for this position. Moreover, since Blotter has transferred his entire interest in Station WCKD to a new group, he has no enterprise which would detract from the time he could devote to DuPage's proposed station, and Blotter has stated that he will, in fact, devote his full time to the management of the new facility.

26. Lois Blotter, who will serve in a general administrative capacity, has spent almost 40 years with a regulated public utility. Although this will be her first endeavor in broadcasting, her background in dealing with regulatory agencies and her knowledge of ad-

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[6] Although Central argues that *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474 (1951), requires a different conclusion, this proceeding includes no misrepresentation or candor issues, and Judge Honig's Supplemental Initial Decision contains no affirmative findings as to the credibility of the witnesses. Since the record before us contains substantial evidence supporting the explanation set forth above, we find no basis for the adverse decision urged by Central.

[7] It appears that there was a use of excess power during presunrise operation in February, 1970, while an inexperienced operator, who had worked for the station for only a short period of time, was on duty.

ministrative procedures provide her with a broad foundation upon which to perform her duties. Glenn Webster, who will be chief engineer for DuPage, has over forty years of service in the communications industry and has owned and operated the largest communications consulting and sales business in the Midwest for almost ten years. Webster's experience in this business, involving the design, development, and installation of various broadcast facilities, provides ample evidence of his ability to execute the specific written duties concerning the day-to-day technical operation of the station which have been assigned to him.

27. In view of the circumstances set forth above, we are convinced that this record contains sufficient evidence to demonstrate that DuPage will be able to operate its proposed station in a proper manner. As we noted above, the sole purpose of this remand proceeding was to make a prospective determination of whether DuPage can be expected to operate its proposed station responsibly. In this connection, we believe that critical weight must be given to the facts that Station WCKD's late sign offs were not the result of an intentional disregard for our regulations and that the license of Station WCKD was subsequently renewed with a public interest finding that the licensee was qualified in all respects.

28. Most importantly, however, this record is devoid of any evidence of significant shortcomings in the operation of Station WCKD after January 1, 1969. Since the circumstances surrounding the operation of Station WCKD during this latter period are most nearly comparable to those which would exist for DuPage's proposed station, Blotter's two and one-half years of unblemished operation are a substantial demonstration that he will be able to manage the proposed broadcast facility responsibly. When this favorable showing is also considered in light of DuPage's detailed and comprehensive plan for the operation of its new broadcast facility, we are convinced that there is no impediment to DuPage and Blotter being licensees of this Commission. Finally, as we previously stated that there would be no relitigation of the Review Board's Section 307(b) determination that DuPage would serve "a more pressing need for a local outlet of self-expression," 19 FCC 2d 250, at 257, we shall adopt the Board's Decision as our own and grant DuPage's application.

29. Accordingly, IT IS ORDERED:

(a) That the Decision, FCC 69R-349, 19 FCC 2d 250, adopted by the Review Board on August 15, 1969, IS ADOPTED as our own;

(b) That the application of DuPage County Broadcasting, Inc. (File No. BP-16292) for a new Class II standard broadcast station to operate on 1530 kHz, daytime only, with a power of 250 watts, utilizing a directional antenna system, IS GRANTED; and

(c) That the application of Howard L. Enstrom and Stanley G. Enstrom, d/b/a Central DuPage County Broadcasting Company (File No. BP-16465), for a new Class II standard broadcast station at Wheaton, Illinois, to operate on 1530 kHz, daytime only, with a power of 500 watts, utilizing a directional antenna system, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Rulings on Exceptions to Supplemental Initial Decision, Exceptions of DuPage County Broadcasting, Inc.

Exception No.	*Ruling*
1	*Granted* to the extent indicated in paragraph 6 of the Decision; *Denied* in all other respects since Judge Honig's findings adequately and correctly reflect the record.
2	*Granted;* see paragraph 7 of the Decision.
3	*Granted* to the extent indicated in paragraphs 7 and 9 of the Decision; *Denied* in all other respects since Judge Honig's findings adequately and correctly reflect the record.
4, 5, 12, 13, 19, 21	*Denied* as being of no decisional significance.
6, 7, 31	*Granted* to the extent indicated in paragraphs 10 and 11 of the Decision; *Denied* in all other respects since Judge Honig's findings adequately and correctly reflect the record.
8	*Granted* to the extent indicated in paragraph 9 of the Decision; *Denied* in all other respects since Judge Honig's findings adequately and correctly reflect the record.
9, 10, 11, 14, 15, 16, 18, 20, 22, 24, 25, 27, 29, 34, 36, 37.	*Denied;* Judge Honig's findings adequately and correctly reflect the record.
17, 23	*Granted;* the requested findings accurately reflect the facts of record in this proceeding.
26	*Granted* to the extent indicated in footnote 5 of the Decision; *Denied* in all other respects since Judge Honig's findings adequately and correctly reflect the record.
28, 30, 33	*Granted* to the extent indicated in paragraphs 12 and 13 of the Decision; *Denied* in all other respects since Judge Honig's findings adequately and correctly reflect the record.
32	*Granted* to the extent indicated in paragraphs 14, 16, and 17 of the Decision; *Denied* in all other respects since Judge Honig's findings adequately and correctly reflect the record.
35	*Granted* to the extent indicated in paragraphs 15, 18, and 19 of the Decision; *Denied* in all other respects since Judge Honig's findings adequately and correctly reflect the record.
38	*Granted* to the extent indicated in paragraph 20 of the Decision; *Denied* in all other respects since Judge Honig's findings adequately and correctly reflect the record.
39	*Granted* to the extent indicated in paragraph 21 of the Decision; *Denied* in all other respects since Judge Honig's findings adequately and correctly reflect the record.
40–57	*Granted* to the extent that the conclusions of the Decision have been substituted for those of the Supplemental Initial Decision.

F.C.C. 71D-62

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
DUPAGE COUNTY BROADCASTING, INC., ELMHURST, ILL.	Docket No. 16965 File No. BP-16292
HOWARD L. ENSTROM AND STANLEY G. ENSTROM D.B.A. CENTRAL DUPAGE COUNTY BROADCASTING CO., WHEATON, ILL.	Docket No. 16966 File No. BP-16465
For Construction Permit	

APPEARANCES

Morton L. Berfield, Esq., on behalf of DuPage County Broadcasting, Inc.; *Robert W. Coll, Esq.*, on behalf of Central DuPage County Broadcasting Company; *Michael W. Faber, Esq.*, and *Philip V. Permut, Esq.*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

SUPPLEMENTAL INITIAL DECISION OF HEARING EXAMINER ISADORE A. HONIG [1]

(Issued September 13, 1971; Released September 17, 1971)

PRELIMINARY STATEMENT

1. The application of DuPage County Broadcasting, Inc. ("DuPage"), requests authorization to construct and operate a new Class II standard broadcast station on 1530 kHz at Elmhurst, Illinois. Central DuPage County Broadcasting Company ("Central"), seeks authorization for a similar broadcast facility on 1530 kHz at Wheaton, Illinois. Each applicant proposes a daytime only operation utilizing a directional antenna system, DuPage with a power of 250 watts and Central with a power of 500 watts.

2. The Commission, while finding both applicants qualified to construct, own and operate the proposed facilities, designated their mutually exclusive applications for hearing in a consolidated proceeding upon Section 307(b) [2] and contingent standard comparative issues (5 FCC 2d 557). After an evidential hearing, this Hearing Examiner issued an Initial Decision on July 23, 1968 (19 FCC 2d 259), granting the DuPage application upon the basis of Section 307(b) preferential considerations and denying the Central application. Thereafter, a

[1] This supplemental decision deals with a remand hearing on issues specified with respect to the application of DuPage County Broadcasting, Inc. for an Elmhurst, Illinois station which had been recommended for grant in an Initial Decision released in July, 1968.

[2] The Section 307(b) issue requires a determination, "in light of Section 307(b) of the Communications Act, which of the proposals would better provide a fair, efficient and equitable distribution of radio service".

petition to reopen the record and enlarge the issues with respect to the DuPage application, filed by Central, was denied by the Review Board by Order released March 24, 1969, 16 FCC 2d 899. Upon consideration of exceptions to the Initial Decision filed by both applicants, the Review Board by decision released August 29, 1969, 19 FCC 2d 250, determined the Section 307(b) issue in favor of the Elmhurst station proposal, granted DuPage's application, and denied Central's Wheaton application.

3. By Memorandum Opinion and Order released February 13, 1970 (FCC 70–159, 21 FCC 2d 395), the Commission, acting upon Central's application for review of the above two Review Board decisions, reopened the record and remanded the proceeding to the Hearing Examiner for further hearing on the following issues:

(a) To determine all of the facts and circumstances surrounding the operation of station WCKD at Ishpeming, Michigan, under the management of Frank Blotter, with particular respect to operation later than the hours specified in the station license and with excessive presunrise power during the months of November and December 1967, and January, November and December, 1968.

(b) To determine in the light of the facts developed under issue (a) whether DuPage County Broadcasting, Inc. of which Mr. Blotter is the principal stockholder, may reasonably be expected to exercise diligently that degree of licensee responsibility required of the operator of a broadcast facility and whether the public interest would be served by permitting Mr. Blotter to acquire an interest in an additional broadcast authorization.

(c) To determine in the light of the evidence adduced pursuant to the foregoing issues what disposition of this proceeding would best serve the public interest, convenience and necessity.

With respect to the further proceedings on the above issues, the Commission stated:

"13. Evidence introduced at the reopened hearing should be restricted to that which is pertinent and relevant to the resolution of the issues designated herein. We contemplate no relitigation of the issues previously designated (such as the Section 307(b) issue) and no changes in the determinations made except as they may be required by the evidence adduced at the reopened hearing under the issues specified herein. The Initial Decision of the Hearing Examiner, therefore, should be confined to a discussion of such evidence and to the changes in the findings, conclusions, and ultimate determinations which are necessitated by reason of the new facts developed at the reopened hearing.

"14. We realize, of course, that Elmhurst has been found to have a greater need for a first standard broadcast facility and that DuPage is the only applicant proposing to locate there. Nevertheless, should it be found that DuPage cannot be expected to exercise that degree of licensee responsibility necessary to justify a grant, we believe that the overall public interest would be better served by an award to Central or by the denial of both applications."

4. By a further Memorandum Opinion and Order, FCC 70–492, released May 15, 1970, the Commission ruled on a petition for reconsideration of its remand action filed by DuPage and granted that petition to the extent of clarifying issue (b) above. The Commission held that DuPage should be allowed to introduce evidence concerning

the steps proposed to be taken by DuPage to insure future compliance with Commission rules as well as evidence showing that the violations in the operation of WCKD were purely accidental or unavoidable, or that other mitigating circumstances were present. The Commission further stated:

> If it appears from all the relevant facts and circumstances that DuPage can be expected to operate responsibly its proposed station, then DuPage's application may be granted.

5. Upon motion filed by DuPage on March 10, 1970, the hearing after remand had been stayed by the Commission by Memorandum Opinion and Order (FCC 70–354, released April 2, 1970). After the Commission's ruling on the DuPage reconsideration petition on May 15, 1970, a hearing conference was held on May 21, 1970.[3] The remand hearing was held on October 6 through October 9, October 14, and December 8 and 9, 1970. The record was left open for the submission of some additional evidence by DuPage which had been requested by the Broadcast Bureau. The further exhibits of DuPage were received by an order of the Examiner released February 18, 1971, which also closed the record (FCC 71M–259). Upon motion of the Broadcast Bureau, the record was reopened for receipt of revised Stipulation No. 3 by an order of the Examiner (FCC 71M–429), released March 19, 1971, which again closed the record.

6. Proposed findings of fact and conclusions were filed by each of the parties on April 28, 1971. Errata relative to the Bureau's pleadings was filed on April 29, 1971. Replies were filed by DuPage and Central on May 28, 1971.

FINDINGS OF FACTS

7. Canyon Broadcasters, Inc. (hereinafter Canyon), was at all times pertinent hereto the license of standard broadcast Station WCKD, Ishpeming, Michigan. Mr. Frank Blotter was president, director and 26.7% stockholder of Canyon.[4] He is the president, a director and 51% stockholder of DuPage County Broadcasting, Inc. Blotter became active in the purchase and resumption of broadcasting of standard broadcast Station WJAN (later WCKD), Ishpeming, Michigan, in 1965 (DuPage Ex. 14, p. 19). Before that, Blotter had been employed with several advertising agencies, as well as NBC (1935–1942), and CBS (1942–1945). In 1958 Blotter established his own consulting firm.

8. Station WCKD (then WJAN), was obtained by Canyon through an assignment early in 1965. Wesley J. Larson, who had worked as a part-time engineer on a contract basis for the WJAN owners, performed the principal technical work in restoring the station to service for Canyon. When the facility returned to the air in August 1965,

[3] A hearing conference had also been held on March 3, 1970, following remand of the case for further hearing.

[4] WCKD was acquired by Canyon and resumed operation August 30, 1965. An assignment application (BAL–6962) to assign the WCKD license to Taconite Broadcasting, Inc. (Tr. 895) was granted by the Commission on June 30, 1971, following renewal of Canyon's license.

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Larson, a first-class FCC licensed engineer,[48] served as its General Manager, Chief Engineer and morning announcer. In addition to Blotter, who as President of Canyon supervised the operation of the station, and Larson, there were three other full-time employees at WCKD: William Argall, a combination announcer-operator with a third class license with broadcast endorsement, who worked the afternoon shift; a secretary-receptionist; and a full-time salesman. WCKD used area high school and college students on a part-time basis to work as announcer-operators on Saturday and Sunday shifts, and to fill in during the week when necessitated by vacation or illness of Larson or Argall. The individuals who served in this part-time capacity during 1967–68 were John Temple, J. Jennings, Steven Pence, John Reidy (who was not a student), and Robin U'Ren. All the part-time broadcast employees had third-class FCC licenses with broadcast endorsements, except for Pence who acquired a special FCC Temporary Operator's Permit before joining WCKD. He later received a third-class license. Blotter verified that each of the part-time employees was licensed by the Commission. Larson instructed them in their duties, which from a technical standpoint involved turning on the equipment, signing on the station, adjusting power output when pre-sunrise operation was in effect, signing-off, and log-keeping. Larson had confidence in his part-time operators.

9. Keeping WCKD a viable operation was difficult for a number of reasons. First, the population of Ishpeming is under 9,000 persons and there is another station in Ishpeming, WJPD, which is a full-time station whereas WCKD was a daytime only operation. Moreover, the prior financial failure of WJAN and its long absence from the air added to the problem of establishing the station as a viable operation. Ishpeming did not have a strong economy and it was difficult to obtain adequate advertising revenue. Thus, during 1967, WCKD had $35,210 in total broadcast revenues as against $33,123 in actual out-of-pocket expenses. In 1968, WCKD had broadcast revenues of $34,454, as against $39,314 in expenses.

10. Mr. Blotter worked hard to keep the station solvent. He concentrated upon programming, selling, maintaining community relations and the management of personnel and the administrative aspects of the station. He is not an engineer in that he had only a third-class endorsed license and possesses no particular engineering background or training. For the technical operation of the station he relied very heavily upon Larson, the Chief Engineer.

11. Ishpeming is located in a remote, rather sparsely populated area near Lake Superior, where the weather conditions are extreme. The winter begins early in the Fall and continues into late Spring. Heavy snowfalls are frequent, the total yearly snowfall averaging between 150–200 inches. Temperatures often drop many degrees below zero for extended periods of time. The combination of all these adverse weather conditions makes the station a much relied upon service. For example, WCKD provided weather, road, school and postal an-

[48] WCKD was not required to have a full-time, first class engineer, but in order to better comply with Commission regulations, Blotter decided to have a first-class engineer available (Tr. 762–63).

nouncements vital to the daily activities of the residents of the area, particularly in the outlying areas. Weather emergencies of this nature are regular occurrences, and WCKD responded by making available as much time as needed to accommodate all public service and weather emergency announcements.

12. Canyon was authorized to operate WCKD as a Class III station, daytime only, on 970 kHz with a power of 5 kilowatts, utilizing a non-directional antenna (DuPage Ex. 13, p. 14). Canyon's license, issued November 2, 1965 (File No. BZ–5793), and renewal of license, issued September 11, 1967 (File No. BR–3786), specified daytime hours of operation in Central standard time[5] from November 2, 1965 to April 27, 1969, beginning at sunrise and ending at sunset for each month as follows (Stipulation 1, DuPage Ex. 13, pp. 1, 14; Ex. 13b):

January	7:30 a.m. to 4:30 p.m.	July	4:15 a.m. to 7:45 p.m.
February	7:00 a.m. to 5:15 p.m.	August	4:45 a.m. to 7:00 p.m.
March	6:00 a.m. to 6:00 p.m.	September	5:30 a.m. to 6:00 p.m.
April	5:00 a.m. to 6:30 p.m.	October	6:00 a.m. to 5:00 p.m.
May	4:15 a.m. to 7:15 p.m.	November	6:45 a.m. to 4:15 p.m.
June	4:00 a.m. to 7:45 p.m.	December	7:30 a.m. to 4:00 p.m.

On April 27, 1969, the license of Canyon was modified (File No. BS–3786), to change the hours of operation from Central standard time to Eastern standard time as follows (DuPage Ex. 13, p. 33):

January	8:30 a.m. to 5:30 p.m.	July	5:15 a.m. to 8:45 p.m.
February	8:00 a.m. to 6:15 p.m.	August	5:45 a.m. to 8:00 p.m.
March	7:00 a.m. to 7:00 p.m.	September	6:30 a.m. to 7:30 p.m.
April	6:00 a.m. to 7:30 p.m.	October	7:00 a.m. to 6:00 p.m.
May	5:15 a.m. to 8:15 p.m.	November	7:45 a.m. to 5:15 p.m.
June	5:00 a.m. to 8:45 p.m.	December	8:30 a.m. to 5:00 p.m.

The license of Canyon specified an antenna current value of 13.25 amperes and antenna resistance of 28.5 ohms (DuPage Ex. 13, p. 14; Stipulation 1).

13. Officially, the Upper Peninsula of Michigan had been in the Central Zone since 1918. In 1936, the Interstate Commerce Commission placed the Lower Peninsula of Michigan in the Eastern Zone (see DuPage Ex. 13A). In early 1969 the Department of Transportation received several petitions to amend Title 49, Sec. 71.4(a) of the Code of Federal Regulations to include the Upper Peninsula of Michigan within the Eastern standard time zone. The petitioners alleged, *inter alia*, that a large part of the Upper Peninsula informally indicated a preference for Eastern time and were already informally observing it (see DuPage Ex. 13A). In 1966, the Uniform Time Act required observance of advanced time within all established time zones from the last Sunday in April to the last Sunday in October (see DuPage Ex. 13A, p. 2). This new Federal law first went into effect in April, 1967 (DuPage Ex. 13, p. 2). On April 27, 1969, the Upper Peninsula was placed in the Eastern time zone (DuPage Ex. 13, Attachment 7), and, as noted supra, WCKD's license was modified to conform to this change.

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[5] Marquette County, in which Ishpeming is located, and a large part of the Michigan Upper Peninsula, had been observing Eastern Standard Time since April 1946 (DuPage Ex. 13, p. 18), although under a 1918 order of the Interstate Commerce Commission defining time zones, the Upper Peninsula always remained in the Central Time Zone (DuPage Ex. 13–A).

PREMATURE PRESUNRISE OPERATION OF WCKD

14. By telegram dated October 30, 1967, Canyon was given authority by the Commission to operate Station WCKD between 6 AM and sunrise specified in its basic instrument of authorization pursuant to Section 73.99 of the Rules.[6] The authorization called for use of WCKD's daytime antenna and operating power of 500 watts determined by the direct method utilizing the last antenna resistance measurement submitted to the Commission (DuPage Ex. 13, pp. 1, 39, 40). The license of Canyon then in effect discloses that pre-sunrise authority was required to permit Station WCKD to operate from 6 AM until sunrise Central standard time in November and December, 1967, and January and February 1968. After the change in Section 73.99 of the Rules became effective,[7] pre-sunrise authority was required to operate the station with pre-sunrise power from 6 AM local time to sunrise specified in Canyon's license commencing September 1, 1968 (DuPage Ex. 13, pp. 14, 35). Entries in WCKD's operating logs were kept in Central daylight (saving) time in October 1967 until the last Sunday of the month, in Central Standard time from the last Sunday in October 1967 to the last Sunday in April 1968, Central daylight time from the last Sunday in April to the last Sunday in October 1968, and Central Standard time from the last Sunday in October to the end of 1968 (Stipulation 3). According to WCKD's operating logs, the station *began pre-sunrise operation prematurely* as follows: In 1967, 4 to 5 minutes on 2 days in October, 2 to 5 minutes on 21 days in November, and 2 to 30 minutes on 20 days in December, and in 1968, 2 to 5 minutes on 22 days in January, 1 to 5 minutes on 24 days in February, 2 to 10 minutes on 9 days in March, 2 to 4 minutes on 7 days in September, 1 to 17 minutes on 26 days in October, 1 to 30 minutes on 26 days in November, and 2 to 17 minutes on 23 days in December.

15. Premature pre-sunrise operation of WCKD between October 30, 1967 and December 30, 1968, of 5 minutes or more duration occurred 65 times out of 180 total instances of prematurity (see, table titled "Premature Pre-Sunrise Operation" on page 8 of Bureau's Proposed Findings of Fact showing the extent of pre-sunrise operation for each specific date involved). Such operation for periods in excess of 5 minutes occurred 13 times in the same period of 14 months.[8] (Stipulation 3.)

Omission of "Carrier On" Entries

16. A blank space near the lower left hand corner of WCKD's operating logs is provided for an entry concerning "carrier on." The half hour log entries begin near the top of WCKD's operating logs in spaces provided for them. According to WCKD's chief radio operator, Mr. Wesley J. Larson, the entry for "carrier on" signifies the time when

[6] Mr. Blotter did not understand the meaning of "basic instrument of authorization" even after discussion of the matter with his chief radio operator. He did not attempt to find out from anyone else (Tr. 786–788).

[7] Effective September 1, 1968, Section 73.99 of the Rules concerning pre-sunrise operation was amended to specify "6 a.m. local time" instead of "6 a.m. local standard time" (14 FCC 2d 393).

[8] The first log entry for December 1 and for December 4, 1967, was 5:30 AM, an impossibility in light of the "carrier on" entry at 5:50 AM.

energy is supplied to the antenna and the first program log entry the time when modulation of the carrier commences (DuPage Ex. 13F; Tr. 977, 978, 1092–1093, 1096). The amount of time representing premature pre-sunrise operation as noted above is the difference in time between the log entry under "carrier on" or from the first half hour log entry if no entry is indicated under "carrier on" and 6 AM local standard time specified in WCKD's license through August 1968 and 6 AM local time thereafter (Stipulation 3). The record (Stipulation 3) shows that entries for "carrier on" were not made on the following days: [9]

1967

October 7, 14, 21, 28.
November 4, 11, 12, 17, 18, 19, 25.
December 2, 9, 16, 17, 21, 22, 23, 24, 25, 26.

1968

January 1, 6, 8, 10, 13, 19, 20, 23, 24, 25, 27, 28.
February 1, 8, 10, 11, 12, 17, 18, 24, 25.
March 2, 3, 8, 11, 16, 21, 23, 25, 28, 30.
April 6, 8, 13, 20, 21, 27, 29, 30.
May 11, 14.
July 6, 7, 10, 11, 12, 14, 21, 28.
August 24.
September 16, 17.
October 1, 12.
November 18, 25, 27.
December 28, 29.

Thus, between October 7, 1967 and December 29, 1968, there were 80 instances of failure to log "carrier on" entries.

Operation With Presunrise Power After Sunrise [10]

17. WCKD was operated with pre-sunrise power instead of normal daytime power after sunrise for 28 minutes on 1 day in October, for 5 minutes on 1 day in November, from time of observation to possibly as much as 30 minutes on 4 days in December, 1967; from 3 to 13 minutes on 4 days in January, from time of observation to possibly as much as 30 minutes on 2 days in January, from 15 minutes to 4 hours and 35 minutes on 11 days in February, from time of observation to possibly as much as 30 minutes on 2 days in February, from 20 to 24 minutes on 5 days in March, from time of observation to possibly as much as 30 minutes on 1 day in March, from 28 to 55 minutes on 1 day in September, from 17 to 25 minutes on 4 days in October, for 25 minutes on 1 day in November, and from 10 to 45 minutes on 13 days in November 1968. The amount of time in minutes for each day is set forth in the detailed tabulation [11] based on Stipulation 3, which appears on page 11 of the Bureau's proposed findings of fact. Between

[9] These omissions were in violation of Section 73.113(a)(1) of the Rules which requires that log entries be made for the time when the station began to supply power to the antenna.

[10] Section 73.87 of the Rules provide that no standard broadcast station shall operate with powers other than those specified in its license.

[11] In those instances where WCKD's operating log entries did not indicate when power was changed from pre-sunrise mode to daytime operation, the period when WCKD operated with pre-sunrise power instead of daytime power can be estimated from the last pre-sunrise and first daytime log entries (Stipulation 3).

October 1967 and November 1968, there were at least 49 instances of operation with pre-sunrise power after sunrise.

Operation With Daytime Power Before Sunrise

18. The operating logs of WCKD disclose that the station began normal daytime operation with 5 kilowatts power before sunrise time specified in its license as follows: 12 minutes to 1 hour and 5 minutes on 28 days in October, 4 to 48 minutes on 12 days in November, and 5 to 60 minutes on 23 days in December 1967; 5 to 42 minutes on 17 days in January, 5 to 30 minutes on 10 days in February, 5 to 7 minutes on 8 days in March, 5 minutes on 6 days in August, 15 to 50 minutes on 18 days in September, 5 minutes to 1 hour and 17 minutes on 10 days in October, 5 minutes to 1 hour and 2 minutes on 4 days in November, and 5 minutes to 1 hour and 33 minutes on 18 days in December 1968. The amount of time in minutes involved in premature daytime operation on various days of the months indicated above is set forth in a table, based on Stipulation 3, appearing on page 13 of the Bureau's proposed findings of fact. Between October 1, 1967 and December 30, 1968, WCKD began normal premature daytime operation on 159 days.

USE OF U.S. NAVAL OBSERVATORY TIME

19. By telegram of October 30, 1967, WCKD was granted a Pre-sunrise Service Authority allowing it to operate with a power of 500 watts "between 6:00 AM and sunrise times specified in basic instrument of authorization. . . ." (DuPage Ex. 13, p. 39). However, Larson, the station's chief engineer, thought that the switch in power from 500 watts to 5,000 watts was to be made at the times for "local sunrise", as specified in Central Standard time in a publication issued by the U.S. Naval Observatory for Marquette, Michigan; [12] Tr. 1019–1022; DuPage Ex. 12, p. 34. Marquette is located some 16 miles from Ishpeming (Tr. 576).

20. WCKD's chief engineer testified that he tried to adhere as closely as possible to the sunrise times set forth in the Naval Observatory publication and also instructed other radio operators at WCKD to do the same (Tr. 1022, 1023). Because of the numerous days WCKD failed to log its time of power change, it was not possible to determine on 158 days whether this policy was followed (Central Ex. F). Of the 82 times between October 28, 1967 and December 31, 1968, when the power change event was logged, reference to Naval Observatory time reflected that seven were on time, seven were within one minute, six were within two minutes, ten were within three minutes, five were within four minutes, and one was within five minutes. Thus, a total of 36 of the recorded power changes were within five minutes or less, representing 44% of the operating log entries. The remaining 46 power changes were made within six minutes to as much as one hour and

[12] Mr. Blotter explained that the use of the U.S. Naval Observatory time chart (DuPage Ex. 13, p. 34) "was based upon our reading of the Commission's public notice (Mimeo. No. 2569) of June 30, 1967, Attachment 10 to DuPage Ex. 13, where it refers to 'operation from 6:00 AM to local sunrise.' It should also be noted that the PSA authorization, Attachment 11 to DuPage Ex. 13, was a new factor when it became effective in October, 1967." (DuPage Ex. 13, p. 7).

nine minutes from the time shown by the Naval Observatory for sunrise, representing 56% of the operating log entries for power changes.[13]

Operation With Excessive Presunrise Power

21. WCKD's operating logs from October 1967 through December 1968 disclose that entries under antenna current indicate that the station operated overpower in excess of five percent above authorized pre-sunrise power (500 watts) a total of 9 times in November and December of 1967, and a total of 18 times in January, February, March, November and December of 1968.[14] Operation of WCKD with excessive pre-sunrise power for each specified day and the length of time involved is set forth in the following table (DuPage Ex. 13, p. 6; Stipulation 3):

Date	Power (Watts)	Time
1967:		
November 4 (Sat.)	1,026	Obs. to 30 min.
December 9 (Sat.)	1,000 to 1,600	1 hr. to 1 hr. 30 min.
" 16 (Sat.)	" " "	1 hr. to 1 hr. 30 min.
" 17 (Sun.)	" " "	Obs. to 30 min.
" 20 (Wed.)	" " "	Obs. to 27 min.
" 22 (Fri.)	" " "	1 hr. 30 min. to 2 hrs.[1]
" 23 (Sat.)	" " "	1 hr. 30 min. to 2 hrs.[1]
" 24 (Sun.)	" " "	34 min. to 1 hr. 4 min.[1]
" 30 (Sat.)	" " "	1 hr. 30 min. to 2 hrs.[1]
1968:		
January 6 (Sat.)	1,000 to 1,600	1 hr. 30 min. to 2 hrs.[1]
" 13 (Sat.)	" " "	1 hr. 30 min. to 2 hrs.[1]
" 20 (Sat.)	" " "	1 hr. to 1 hr. 30 min.
" 21 (Sun.)	" " "	Obs. to 30 min.
" 27 (Sat.)	" " "	1 hr. to 1 hr. 30 min.
February 3 (Sat.)	" " "	1 hr. 1 min. to 1 hr. 34 min.[1]
" 4 (Sun.)	" " "	Obs. to 30 min.[1]
" 10 (Sat.)	" " "	1 hr. 2 min. to 1 hr. 32 min.[1]
" 14 (Wed.)	1,026	3 hrs. to 4 hrs. 10 min.[1]
" 24 (Sat.)	1,241 to 1,318	3 hrs. 22 min.[1]
March 2 (Sat.)	1,357	Obs. to 30 min.[1]
November 2 (Sat.)	1,000 to 1,600	1 hr. to 1 hr. 30 min.[1]
December 7 (Sat.)	" " "	1 hr. to 1 hr. 30 min.
" 8 (Sun.)	" " "	Obs. to 30 min.
" 21 (Sat.)	" " "	1 hr. to 1 hr. 30 min.
" 22 (Sun.)	1,131	17 minutes.
" 28 (Sat.)	1,000 to 1,600	1 hr. 4 min. to 1 hr. 34 min.
" 29 (Sun.)	" " "	Obs. to 34 min.

[1] Portions occurred after sunrise (i.e., station operated with pre-sunrise power after sunrise).

22. The above table shows that out of a total of 27 days on which WCKD operated with excessive pre-sunrise power, all were on either Saturday or Sunday except three days that fell on either Wednesday or Friday. WCKD's chief radio operator began the early morning operation of the station Monday through Friday for the period in question. From 6 AM to 9 AM he was alone at the station and performed other duties (announcing, receiving weather reports, police informa-

[13] Sunrise indicated in the Naval Observatory publication compared with the time entered in WCKD's operating log showing when operating power was changed from 500 watts to 5,000 watts is set forth in a table prepared by the Bureau and appearing at pp. 15–16 of its proposed findings of fact. The tabular data is derived from DuPage Ex. 13, p. 34, Central Ex. F, and Stipulation 3.

[14] Section 73.52(a) of the rules governing overpower provides that the operating power of a standard broadcast station shall be maintained as near as practicable to the licensed power and shall not exceed the limits of five percent above the licensed power.

tion, road condition information, school closings and menus) besides the technical operation of the station. He was involved in pre-sunrise overpower operation of the station on February 14, 1968.[15] On Saturdays and Sundays the early morning operation of WCKD was begun by part-time third class radio operators (DuPage Ex. 13, p. 6; Stipulation 4, p. 3). Mr. Robert U'Ren, a part-time radio operator who held a radiotelephone third class permit with broadcast endorsement, was responsible for pre-sunrise overpower operation of WCKD on 15 of the days, all of which except one fell on either Saturday or Sunday. He was discharged by Canyon on May 5, 1968, after receipt of an "Official Notice of Violation", dated May 21, 1968, from the Commission, noting excessive power violations during the tours of duty of U'Ren. Other third class radio operators involved in pre-sunrise overpower operation of the station included Messrs. Stephen Pence (6 days), John Reidy (3 days) and Jay Jennings (1 day) (DuPage Ex. 13, pp. 9, 10, 42; Stipulation Nos. 3 and 4).

23. Several factors emerge from the record that may well account for operation of the station with excessive operating power. One of the likely technical factors resulting in excessive pre-sunrise operation stems from the unorthodox and unauthorized modification of WCKD's transmitter to reduce operating power from 5,000 watts to 500 watts. The Commission telegram which gave Canyon authority to operate WCKD with pre-sunrise power of 500 watts specified the following: "No objection use kit furnished by transmitter manufacturer to reduce transmitter output power. Necessary make within 90 days equipment performance measurements to show that transmitter meets requirements of Section 73.40. . . . Retain measurements in Station file." (DuPage Ex. 13, p. 39). The transmitter specified in Canyon's license and used by WCKD is a Gates type BC–5B designed for power output of either 5,000 watts or 1,000 watts (DuPage Ex. 13, pp. 8, 14; Stipulation 1; Tr. 1038, 1097). Operating power of the transmitter is changed by a switch that functions to reduce the plate voltage on the final stages of the transmitter (Tr. 1038, 1043–1045). Canyon's chief radio operator modified WCKD's transmitter twice, once in November 1967 and again in February 1969 (DuPage Ex. 22; Tr. 1039, 1042–1044). The manufacturer's kit specified in the Commission's telegram was not used by Canyon for either modification because it was considered too expensive (Tr. 1041–1042, 1044, 1064). The first modification was made without any addition or change in the components of the transmitter.[16] Blotter told Larson to do it as inexpensively as he could (Tr. 1044). The modification merely consisted of changing transmitter output power from 5,000 watts to 500 watts by a flick of the switch and detuning the antenna circuit until the antenna ammeter indicated 4 amperes of antenna current corresponding to an output

[15] Stipulation 4, page 3, shows that Mr. Larson was responsible for operation of WCKD with excessive *daytime* power on this date. However, Stipulation 3 shows that WCKD operated with excessive *pre-sunrise* power on this date and that operation of the station with excessive *daytime* power was not involved on February 14, 1968.

[16] Canyon did not notify the Commission or request authority to make the first modification (Tr. 1108).

power of 500 watts [17] (Tr. 1045). This modification was a compromise in order to fulfill the requirement of reducing power to 500 watts for pre-sunrise operation (Tr. 1039). The chief engineer who made the modification indicated by oral testimony that it "was a clumsy way of doing it" because it represented "a considerable reduction in the efficiency of the transmitter" but "I didn't have all of the necessary ingredients so I did it the best way I could with what I had" [18] (Tr. 1038, 1040, 1060). He had talked to a sales engineer from the Gates Company about the purchase of a kit at one time but this representative never reappeared. This engineer indicated that the modification actually later made "was okay" (Tr. 1042). Larson instructed the other radio operators at the station concerning the power change (Tr. 1045, 1066). He also admitted that he did not review the Commission's rules governing transmitter modification and "I realized at the time perhaps I was violating the Commission's rules . . . but the reason I did it was because of convenience." (Tr. 1063). In Larson's opinion, excessive pre-sunrise operation could have been caused by failure of the radio operator involved to follow instructions in changing power by either not changing the antenna loading tuning after the transmitter was switched to a different power or not switching the power after the antenna loading tuning was changed (Tr. 1052, 1065). Explained in simpler terms of operating procedures, excessive pre-sunrise power could have resulted "because an operator did not turn the knob to the proper marking" or because the operator on duty "forgot to turn the knob" to the proper marking (Tr. 1065). In mitigation of these omissions Larson stated: "I realize that an early morning man is involved in programming and some of these technical details are overlooked (Tr. 1065).

24. WCKD's chief radio operator did not examine the operating logs with particular respect to whether the station was operating in accordance with its authorized power because he had confidence in the operators (Tr. 1052–1053). When he occasionally examined the operating logs closely, and noted wide departures in operating power, he assumed these were attributable to the operator's reading modulation peaks or being inattentive to getting proper readings. Larson conceded he was negligent in this respect (Tr. 1058). During the period from October 1967 through January 1968, Larson reviewed the programming logs of WCKD and in the same time span he periodically reviewed the transmitter logs in groups for other matters but did not find any technical discrepancies which would indicate that the station was not being operated in accordance with the terms of its license and the Commission's rules (Tr. 994–1000).

25. Another factor accounting for the operation of WCKD with excessive pre-sunrise power involves a defective antenna ammeter

[17] The 28.5 ohms antenna resistance specified in Canyon's station license (DuPage Ex. 13, p. 14) in combination with 500 watts authorized operating power yields 4.19 amperes for the antenna current calculated in accordance with Section 73.51 of the Rules.

[18] Equipment performance measurements were made on December 18, 1967 on both modes of operation after the first modification of the transmitter. Technical deficiencies in the equipment performance measurements were corrected between November 12, 1968 and April 11, 1969 by exchange of correspondence between Canyon and the Commission (DuPage Ex. 13, pp. 44–69).

which was used for the normal daytime and pre-sunrise operations. Besides the regular antenna ammeter located at the base of the antenna, WCKD also uses a remote meter located about 200 feet from the base meter (Tr. 1047). The remote antenna ammeter is not always free of drift (Tr. 1048). The meter is not marked to indicate five percent tolerance above authorized power (Tr. 1346). Canyon's chief engineer indicated that occasionally, when WCKD terminated its daytime operation, the needle of the antenna ammeter did not always return to zero on the scale of the meter but would stop at about 6 amperes. When this happened it was necessary to tap the meter sharply to return the needle to zero (Tr. 1348). If the radio operator on duty failed to observe the antenna ammeter when the needle did not return to zero, the antenna current could indicate 6 amperes when the transmitter was turned on for pre-sunrise operation. In order to achieve operating power in excess of 1,000 watts for pre-sunrise operation, a transmitter efficiency of 137 percent would be required. This is an impossibility (Tr. 1351). Nevertheless, because of a defective antenna ammeter, among other reasons, entries were made in WCKD's operating logs which indicate overpower for pre-sunrise operation in excess of 1,000 watts (Stipulation 3). The replacement cost of the type of antenna ammeter used by WCKD is about ten or fifteen dollars (Tr. 1349, 1350). Despite the low cost, the meter was never replaced (Tr. 1349). The operating log for February 28, 1970 shows pre-sunrise entries for antenna current of 6 amperes and 6.1 amperes corresponding to 1,026 watts and 1,062 watts, respectively [19] (Central Ex. M). This corresponds to more than two times the authorized pre-sunrise power.

26. WCKD's chief engineer also indicated that still another possible cause of operation with excessive power was the responsible radio operator reading the antenna current in the presence of modulation or on modulation peaks (Tr. 1057–1059, 1100, 1112).

27. In the second modification of the transmitter, an inexpensive 2,000 ohm resistor designed to dissipate 500 watts was inserted in series with the voltage supply to the final radio frequency amplifier with the transmitter in the 1,000 watt mode of operation.[20] For 500 watt operation, compensation was also made for the audio level by adjustment of the audio pad and audio limiter (DuPage Ex. 17, Tr. 1043, 1044).

Operation With Excessive Daytime Power

28. WCKD's operating logs for the period indicated from October 1, 1967 to December 30, 1968, also disclose that the station operated overpower in excess of five percent above authorized daytime power, four times in 1967 and 28 times in 1968. The following table shows the overpower and length of time involved (Stipulation 3):

[19] $P=I^2R=6^2 \times 28.5=1,026$ watts, where P is power in watts, I is antenna current in amperes and R is antenna resistance in ohms.

[20] Canyon did not request authority to modify WCKD's transmitter the second time until January 14, 1971 (DuPage Ex. 19). By telegram dated January 21, 1971, the Commission notified Canyon that there was no objection to the second modification (DuPage Ex. 20). The equipment performance measurements on the second modification had been completed May 8, 1970 (DuPage Ex. 21).

Date	Power (watts)	Time
1967:		
Dec. 22 (Fri.)	5,427	Obs. to 30 min.
" 23 (Sat.)	5,271 to 5,427	2 hrs. 30 min. to 3 hrs. 30 min.
" 24 (Sun.)	5,271	Obs. to 30 min.
" 30 (Sat.)	5,271	30 min. to 1 hr. 30 min.
1968:		
Jan. 27 (Sat.)	5,271	Obs. to 30 min.
" 28 (Sun.)	5,586 to 6,412	4 hrs. 2 min. to 4 hrs. 32 min.
" 29 (Mon.)	5,587 to 6,412	5 hrs. 14 min. to 5 hrs. 44 min.
Feb. 3 (Sat.)	5,271 to 6,075	6 hrs. 28 min. to 7 hrs. 31 min.
" 4 (Sun.)	5,586 to 6,412	3 hrs. 30 min. to 4 hrs. 30 min.
" 10 (Sat.)	5,271	Obs. to 1 hr.
" 11 (Sun.)	5,427 to 5,747	4 hrs. to 4 hrs. 30 min.
" 17 (Sat.)	5,422	1 hr. to 2 hrs.
" 18 (Sun.)	5,271 to 5,747	4 hrs. 30 min. to 5 hrs.
" 24 (Sat.)	5,271 to 5,586	1 hr. 36 min. to 2 hrs. 6 min.
" 25 (Sun.)	5,271 to 5,586	5 hrs. to 5 hrs. 30 min.
Mar. 1 (Fri.)	5,427	Obs. to 30 min.
" 2 (Sat.)	5,271 to 6,243	2 hrs. to 3 hrs.
" 8 (Fri.)	5,427 to 5,586	5 hrs. to 5 hrs. 30 min.
" 10 (Sun.)	5,427 to 5,747	5 hrs. to 5 hrs. 30 min.
" 16 (Sat.)	5,271 to 5,586	3 hrs. to 5 hrs. 30 min.
" 17 (Sun.)	5,271 to 5,747	4 hrs. to 5 hrs.
" 21 (Thurs.)	5,271 to 5,427	1 hr. to 1 hr. 30 min.
" 24 (Sun.)	5,271 to 5,586	2 hrs. to 4 hrs. 30 min.
Apr. 21 (Sun.)	5,271 to 5,586	3 hrs. 30 min. to 5 hrs.
May 5 (Sun.)	5,271 to 6,412	5 hrs. 30 min. to 6 hrs.
" 11 (Sat.)	5,271	Obs. to 31 min.
" 12 (Sun.)	5,271	Obs. to 30 min.
" 18 (Sat.)	5,586	6 hrs. 30 min. to 7 hrs.
Dec. 8 (Sun.)	5,271 to 5,349	4 hrs. 30 min. to 6 hrs.
" 21 (Sat.)	6,159 to 6,841	4 hrs. 30 min. to 5 hrs. 30 min.
" 28 (Sat.)	5,271 to 5,349	3 hrs. 30 min. to 6 hrs.
" 29 (Sun.)	5,271 to 5,349	5 hrs. to 5 hrs. 34 min.

29. The above table shows that of the 32 days the station was operated with excessive daytime power, five days fall on Monday, Thursday or Friday. Mr. Blotter was on duty May 11, 1968. The remaining days were distributed as follows: Robin U'Ren, 22 and a fraction days; Stephen Pence, 4 days; John Reidy, one and a fraction days; William Argall, 1 day; Gregg Hill, 1 day; and Jay Jennings, 1 day (Stipulation 4, pp. 3, 4).

30. Although the record is not precise as to the power output capability of WCKD's transmitter, there is an indication from Larson's testimony that it may be somewhere between 5.5 kilowatts and 8 kilowatts (Tr. 1097, 1105). The only reason given for the operation of the station with excessive daytime power was that the operators on duty at WCKD may have been reading the antenna current during modulation peaks (Tr. 1100).

Operation Past Sunset

31. No difficulty was experienced by WCKD's radio operators in making entries in the operating logs concerning the local time for the period in question, whether in Central standard time or Central daylight time, depending upon whichever was in effect locally. Entries in WCKD's operating logs were kept in local time (DuPage Ex. 13F, Tr. 737, 855, 861–867, 938, 1011, 1013). WCKD's operating logs for the period in question in 1967 and 1968 show that the station signed off

the air at the end of the broadcast day [21] either early, on time or late, as summarized in the following table (DuPage Ex. 13, pp. 1 to 4; Stipulation 2):

Month	Days	Local Time	Remarks
1967:			
Oct.	1 through 28	CDT	WCKD signed off on time.
"	29	CST	WCKD signed off on time.
"	30 and 31	CST	WCKD signed off 1 hr. late.
Nov.	1 through 30	CST	WCKD signed off 1 hr. late.
Dec.	1	CST	WCKD signed off 1 hr. 15 min. late.
"	2 through 31	CST	WCKD signed off 1 hr. late.
1968:			
Jan.	1 through 25	CST	WCKD signed off 1 hr. late.
"	26 through 31	CST	WCKD signed off 45 min. late.
Feb.	1 through 29	CST	WCKD signed off on time.
Mar.	1 through 26	CST	WCKD signed off on time.
"	27	CST	WCKD signed off 30 min. late.
"	28 through 31	CST	WCKD signed off on time.
Apr.	1 through 27	CST	WCKD signed off on time.
"	28	CDT	WCKD signed off 1 hr. 30 min. early.
"	29 and 30	CDT	WCKD signed off 1 hr. early.
May	1 through 31	CDT	WCKD signed off 1 hr. early.
June	1 through 30	CDT	WCKD signed off 1 hr. early.
July	1 through 31	CDT	WCKD signed off 1 hr. early.
Aug.	1 through 31	CDT	WCKD signed off 1 hr. early.
Sept.	1 through 30	CDT	WCKD signed off 1 hr. early.
Oct.	1 through 26	CDT	WCKD signed off 30 min. early.
"	27 through 31	CST	WCKD signed off 30 min. late.
Nov.	1	CST	WCKD signed off 1 hr. 15 min. late.
"	2 through 30	CST	WCKD signed off 1 hr. late.
Dec.	1 through 7	CST	WCKD signed off 1 hr. late.
"	8	CST	WCKD signed off 1 hr. 5 min. late.
"	9 through 31	CST	WCKD signed off 1 hr. late.

Mr. Blotter was on duty December 17, 1968, when late sign-off occurred. The remaining late sign-off days were distributed among the operators as follows: William Argall, 112 days; John Reidy, 19 days; Robin O'Ren, 15 days; Jay Jennings, 14 days; and John Temple, 2 days (Revised Stipulation 4, pp. 1, 2).

32. By various letters dated October 25, November 2 and December 7, 1967, Canyon requested waiver of the Commission's Rules to permit Station WCKD to operate one hour past sunset as specified in its license (DuPage Ex. 13, pp. 27–29). By letter dated January 19, 1968, the Commission did not grant Canyon's request and pointed out that, in order to control objectional nighttime interference, times, modes of operation or powers other than authorized were not permitted (DuPage Ex. 13, p. 30). The Commission's letter was received by Canyon on or about January 26, 1968 (DuPage Ex. 13D, Tr. 829, 831). As reflected in the table above showing operation past sunset, WCKD continued to sign off past sunset after January 26, 1968, specifically 45 minutes late, 5 days from January 27 thru 31, 30 minutes late on March 27, 30 minutes late 5 days in October, 1 hour and 15 minutes late on November 1, 1 hour late the balance of November, and 1 hour late all of December, 1968.

33. The circumstances surrounding the operation of WCKD past sunset during the months of October, November, December, 1967 and November and December, 1968, were the subject of testimony in this

[21] WCKD's broadcast day terminated at sunset as specified in Canyon's license.

proceeding. There are several reasons given by Blotter regarding the late sign-offs which occurred between October, 1967 and December, 1968. As noted previously, in April 1967, pursuant to the Uniform Time Act, the Upper Peninsula of Michigan began to observe Central daylight time.[22] According to Blotter's understanding, since World War II, the Upper Peninsula had until April 1967 been on Eastern standard time for the entire year (DuPage Ex. 13, pp. 1, 2). Therefore, according to Blotter, the station always converted its license time, expressed in terms of CST, to local time (Eastern standard) by adding one hour (DuPage Ex. 13, p. 2). However, though some people in the area expressed a preference for Eastern time and some parts were informally observing Eastern time, officially the area was in the Central time zone (DuPage Ex. 13A). According to Blotter, when the Uniform Time Act first went into effect in April 1967,[23] there was no problem in sign-off since Central daylight time coincided with Eastern standard time, and, therefore, the one hour adjustment to coincide with CST specified in the license required no change (DuPage Ex. 13, p. 2). It was in October 1967, however, when the area was to officially return to CST, that, according to Blotter, the confusion began (DuPage Ex. 13, p. 3).

34. Although the various newspaper articles during the months of October, November and December 1967, and November and December 1968, reflect considerable controversy over which time zone should be deemed to apply in the Michigan Upper Peninsula, they do not indicate any confusion as to which time zone was applicable. (DuPage Ex. 13, Attachment 2). Nevertheless, Blotter contends that there was much confusion. He testified that he did not know exactly what time to observe in the Ishpeming area, getting the pressure from the city, state and school officials (Tr. 735). When asked whether these communications had an impact on his state of mind, Blotter said that "it was just a confusion as to nobody knew what the official time was" including himself (Tr. 736). Blotter stated that in years previous to 1967, the station signed off at five o'clock, but when the confusion occurred, "we just thought we would be right and satisfy the local community and stay on at that time accepted in the area" (Tr. 733). He further testified that "there was no way to determine" what was the time that was being accepted in the area (Ibid.). Notwithstanding the local confusion, Blotter admitted that he knew Canyon's license was expressed in terms of Central Standard Time (Tr. 752–3), and when asked what time the station would give its listeners, he responded that the disc jockeys would give two times, expressed in CST and EST or tell people to take their choice (Tr. 755–6).

35. According to Blotter, he was not aware that the station was violating its license when it signed off at 5:15 PM CST in November 1967 (Tr. 750). He testified he was aware it signed off at 5:15, but was not aware of particularly what time the station was observing—whether it was 5:15 CST or EST (Tr. 751). According to Blotter, he and Larson discussed this matter in October–November 1967 (Tr. 751–2),

[22] Central daylight time runs from late April to late October, each year.
[23] As noted, supra, the Uniform Time Act specified the dates when advanced time (daylight savings time) went into effect.

but the determination of the exact time—whether to sign off in accordance with Central Standard Time or Eastern Standard Time—was not clear to them.[24] Blotter expressed his belief that the station followed the previous sign-off times the station had always followed as a service in the area (Tr. 750). Stated otherwise, it was Blotter's understanding that certain local sign-off times had become customary (Tr. 733–4).

36. Blotter's claim of confusion concerning the applicable time zone as a cause of late sign-offs is not consistent with other aspects of Station WCKD operation. First, weekend operators normally showed up to work on time (Tr. 1025) and the station's clock was presumably on CST (Tr. 862) during October, November and December 1967. Secondly, although the station signed off late by one hour, few of the many morning violations occurred in graduations of one hour. Blotter was unable to explain why sign-on was not confusing (Tr. 926–928); [25] and totally unexplainable is how, due to the time confusion, the station signed off 30 minutes late in October 1968 [26] (Tr. 854) with respect to late sign-offs in November 1968, Blotter testified that along with the confusion this was due to "a technical error" caused by the secretary's copying of sign-off times from old program logs (Tr. 872–76; 884–5), and it was these logs which dictated sign-on and sign-off (Tr. 1107) and again, there was no consistently corresponding violations of one hour in the morning.

37. Further evidence which does not square with Blotter's alleged confusion revolves about the station's operation during the last five days of January, after Blotter received a letter dated January 19, 1968 (Attachment 6, DuPage Ex. 13) from the Commission informing him that his request for a one-hour delay in sign-off was denied. Not only does the request itself (DuPage Ex. 13, p. 27) evidence an understanding of what time was, in fact, applicable to the station, but also WCKD continued to operate beyond its authorized hour until February 1. Blotter attributed these violations to a change in office girls (Tr. 830–31). He was at the station on the five days in question (Tr. 831).

38. It is Blotter's contention that he penalized himself "due to the confusion" as to the applicable local time, and signed off earlier than required during the summer of 1968 (Tr. 843). Blotter at one point testified that he construed the station's authorization to operate according to CST as an authorization to operate one hour later if the area went to CDT (Tr. 845). His subsequent testimony indicates however that the early sign-off was in fact a personal mistake stemming from his own confusion regarding sign-off time when local time was CDT and not CST (Tr. 851). While Blotter testified he personally made the decision as to sign-off early during the summer of 1968, he could not recall whether he made the decision to sign-off late in October 1968 (Tr. 854).

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[24] According to Larson's testimony, he could recall no discussion with Blotter concerning sign-off procedures during the period October, November, December 1967 (Tr. 989–90) and there was no occasion for him, during this same period, to reach a decision personally as to when the station should be signed off (Tr. 990).

[25] Larson stated that the station had no difficulty in making the necessary adjustment of switching from daylight to standard time and vice versa in order to sign-on at 6:00 AM (Tr. 955).

[26] The station signed off 45 minutes late between January 27 to the 31st.

Official Notice of Violation

39. WCKD was inspected by a Commission engineer on May 7, 1968. Subsequently, an Official Notice of Violation was issued May 21, 1968 involving some ten citations including one for operation of the station with power in excess of five percent above authorized power and one for no provision being evident that the transmitter had been modified to effect satisfactory operation at 500 watts during periods of pre-sunrise service (DuPage Ex. 13, pp. 40–41). Canyon responded to the Notice of Violation by letter dated June 4, 1968 (DuPage Ex. 13, pp. 42–43). However, WCKD again operated with pre-sunrise power in excess of five percent of licensed value on November 2, December 7, 8, 21, 22, 28 and 29, 1968 and with daytime power in excess of five percent of licensed value on December 8, 21, 28, 29, 1968, as previously indicated (Stipulation 3). The June 4, 1968 response to the Notice of Violation indicated that the radio operator responsible for overpower operation of the station was discharged May 5, 1968. The response in connection with the modification of the transmitter indicated that "Our transmitter has a 'low power' switch that is utilized to reduce to conform to PSA". However, as previously indicated, the switch merely changed the power output of the transmitter from 5,000 watts to 1,000 watts.

Supervision of WCKD Operations

40. Larson, who was General Manager and chief engineer of WCKD in 1967 and 1968, was responsible to Mr. Blotter for the discharge of his duties (Tr. 744). Blotter was the only officer, director or stockholder of Canyon who resided in the Ishpeming area (Tr. 747). He spent most of his time on sales (Tr. 744). Blotter instructed Larson, when the latter became General Manager, to conform to the Standards of Good Practice, follow NAB Regulations, and "live up to [the] license and perform his duties in accordance with [Commission] regulations" (Tr. 746–7). They conferred on many items concerning the station during 1967 and 1968 [27] (Tr. 744).

41. According to Blotter, it was Larson's sole responsibility in October–November 1967 to determine sign-on and sign-off times (Tr. 748). At one point in his testimony, Larson agreed that it was part of his responsibility to consider the sign-off procedures of the station but that he assumed the office staff took care of it (Tr. 1008). Larson stated subsequently, however, that it was the owner's responsibility to be concerned with sign-on and sign-off times and to check program logs with the license and that he (Larson) would have some responsibility over what happened after that (Tr. 1107). He also testified that Blotter did not ask him what he thought was the appropriate time to sign-off, either in the winter of 1967–1968 or in November–December 1968 (Tr. 1030–31). Larson also testified that although there may have been some discussion about the Commission's letter of January 19, 1968, denying the request to operate late, he could not recall whether he saw the letter (Tr. 1006). Larson did state, however, that he was not aware of any operating irregularities regarding sign-

[27] The record does not reflect that Blotter established any procedures for regularly reviewing Larson's work (Tr. 747).

off during the fall of 1967 (Tr. 1008). When clarifying whose decision it may have been to sign-off late in the fall of 1967, Blotter said that due to the confusion as to what time to recognize, it was possibly a joint decision (Tr. 749–50),[28] his recollection having been confused in the process of preparing pleadings and responding to violations (Tr. 750). As previously noted herein, Larson recalls no such discussion,[29] and the denial of the request for waiver according to Larson, did not change station operation with regard to sign-off time (Tr. 1005). In spite of the asserted confusion on his part regarding the appropriate time to be observed, Blotter admits that he did not find out how WJPD, the other station in Ishpeming, handled their reduction in power at sunset (Tr. 806–806). No effort was made by Blotter to find out from any other daytime station in the area what time it was signing off and he did not tell Larson to do so (Tr. 813).

42. Blotter, with his limited knowledge of engineering, accepted Larson's explanations regarding transmitter logs (Tr. 765), though he did review the program logs and insured that they were in accordance with the Commission's rules (Tr. 764). He never felt the need to contact a consulting engineer with regard to the operation of WCKD until this remand proceeding because he always assumed that everything was being operated in accord with the rules (Tr. 764–5). Notwithstanding the claimed confusion over the applicable time during the fall of 1967, when the area switched from CDT to CST in October 1968, Blotter gave no instructions to Larson or any other member of the WCKD staff relative to sign-off procedures (Tr. 881).[30] He does not know whether Larson so instructed anyone (Tr. 881), but he did not tell him to do so (Tr. 882). In addition, he never inquired of Larson whether he was reviewing the transmitter logs on a daily basis (Tr. 907) and left the briefing of the operators to Larson (Tr. 897). Blotter did discuss operational discrepancies with Robin U'Ren prior to termination of employment (Tr. 897). Larson did not review the transmitter logs systematically (Tr. 994). He did review them in groups to ascertain the operating profile of the transmitter prior to a trouble period (Tr. 994–95). Blotter did not have occasion to ask Larson about his daily supervision of the transmitter logs (Tr. 907–908).

43. Blotter did not specifically recall how the Naval Observatory Charts, used to determine local sunrise and sunset time for sign-on and sign-off, were acquired, although he was sure that he and Larson discussed it (Tr. 846). He never undertook to determine whether the station was switching to full power in accordance with the Naval Observatory Charts (Tr. 785). Blotter did not understand what

[28] Blotter presumed that once he wrote the request to the Commission for late sign-off authorization, he could go ahead and conduct his operation as if the waiver had already been granted (Tr. 836–838). He did not seek the advice of counsel on this matter (Tr. 822, 933).

[29] Larson reaffirmed that he could not recall any discussion with Blotter concerning sign-off (Tr. 1008, 1030). Moreover, with regard to the fall of 1967, Larson stated that, as a practical matter, the office secretary would have exercised the responsibility for deciding sign-on and sign-off times because she probably would have referred to past practices (Tr. 990).

[30] After Blotter received the Commission's letter denying his request for late operation, he posted notifications of sign-on and sign-off times on the wall in the station (Tr. 906) and mentioned to Larson that the station was to sign-off according to CST beginning in February 1968 (Tr. 831).

operating according to one's "basic instrument of authorization" meant (Tr. 786), and said that he had no one locally to ask (Tr. 786). He does not recall whether Larson understood it (Tr. 786–87).

44. As noted, *supra*, many of the violations occurred on the weekends. Although Blotter left the responsibility for supervising the operators to Larson (Tr. 897), Larson said that the weekend operators did not require close observation. Since Larson was not at the station on the weekends (Tr. 1087–88), Blotter could observe them more closely than Larson, according to the latter (Tr. 1087). Larson was unable to state, however, just how much time Blotter spent at the station on weekends (Tr. 1088).

45. According to Larson, he was aware (Tr. 1070) of the Commission's Official Notice of Violation (DuPage Ex. 13, Attachment 12, pp. 40–41), but with regard to the ensuing correspondence between Blotter and the Commission, Larson supplied information to Blotter but did not compose the letters (Tr. 1073). In Larson's opinion, Blotter, while not qualified as an electronics engineer, had as good a working knowledge of the technical problems of the station as anyone else he has known (Tr. 1074). Larson had enough confidence in Blotter so that when he told Blotter something the latter got the point, and if Blotter had any questions he would ask him (Tr. 1076).[31] In addition, Larson stated that nontechnical matters were basically Mr. Blotter's responsibility (Tr. 1078). When asked whether he presented the equipment problem concerning reduction in power for pre-sunrise operation to Blotter, Larson said that he probably did but that Blotter was probably busy and that engineering was his, Larson's, function and that this adjustment was his sole decision (Tr. 1064–65). Because of Blotter's limited engineering knowledge and experience, he relied on Larson to make the necessary modification properly on the transmitter to reduce its power to 500 watts (Tr. 769–770). Blotter first learned about the possibility of excessive pre-sunrise power violations about December 23, 1968, when Central filed its petition for reopening the record with the Commission (Tr. 777–779). He learned of the late one-hour operation in November and December 1968 also from the same pleading (Tr. 878).

Future Compliance

46. DuPage Exhibit 14 constituted DuPage's proposal for the manner in which it intends to operate its new station should its application be granted. Attached to this exhibit are the biographies of Frank Blotter and Lois Blotter, the two principals of the applicant, and Glenn E. Webster, the intended full-time Technical Director-Chief Engineer. Frank Blotter will serve as general manager with general supervisory responsibility over the programming, sales and engineering departments. Mr. Webster would be in charge of the day-to-day technical operation of the station. Lois Blotter would have supervisory responsibility for the station in the areas including financial matters, mail, state and federal reports, personnel, and community relations. Lois Blotter's biography indicates that she has been Secretary to the Chairman and Office Manager of the Chairman's

[31] This was in the context of whether Larson reviewed Blotter's letters to the Commission.

Division of the Peoples Gas Light and Coke Company in Chicago, in addition to having been responsible at one time for the processing of special applications (DuPage Ex. 14, Attachment D). Glenn E. Webster has held a First Class Radiotelephone license over 40 years, and is a consulting engineer in the communications field. Webster was active as a consulting radio engineer as early as 1929 when he supervised the construction of pioneer radio stations. He has a B.S. degree in electrical engineering. From 1962 to date, he has been the President and owner of Webster Engineering Company which is engaged in consulting engineering and management services for many branches of the communications industry throughout the Midwest. His organization designs, develops, and, in some cases, actually installs the complete station or system (radio, television, CATV, etc.) on a turn-key basis (DuPage Ex. 14, Attachment E).

47. The technical operation of the new standard broadcast station at Elmhurst would be organized as follows: (DuPage Ex. 14, pp. 2–4; Ex. 16)

a. The initial construction and adjustment of the proposed directional antenna system will be under the supervision of a recognized engineering consulting firm.

b. A qualified person will be employed as the Technical Director and Chief Engineer of the new station, as required by the Rules. It will be the responsibility of the Technical Director to see that:

1. Proper fencing will be constructed around the base of each antenna tower.
2. The ground system will be inspected once a week to insure that it is complete and in good condition.
3. Each meter will be labelled as to its function.
4. Properly licensed radio operators will be employed and instructed in their duties including correct maintenance of operating, maintenance and program logs and appropriate station identification at specified intervals.
5. The transmitter equipment will be inspected five days each week as required by the Rules.
6. Operating, maintenance and program logs, as well as equipment performance measurements, will be made available at all times as required by the Rules.
7. Operating power, antenna base currents in the directional antenna system, field strength at monitoring points and excursions in modulation will be maintained within the requirements of the Rules or as indicated in the license.
8. If the transmitter functions improperly the station will cease operation if it cannot be corrected, and the Commission's Engineer in Charge of the appropriate field office will be notified as required by the Rules.
9. Remote meters will be calibrated once a week as required by the Rules.
10. Equipment performance measurements will be made as required by the Rules.
11. Station authorizations, modifications and radio operator permits will be posted as required by the Rules.
12. Lighting and painting of the antenna towers will be maintained as required by the Rules or as indicated on the license.
13. Steps will be taken to insure that radio operators make log entries as required by the Rules.
14. The station will adhere to sign-on or appropriate change in the modes of operation at sunrise, and sign-off at sunset specified in the basic instrument of authorization.
15. Spurious and harmonic radiations will be attenuated.
16. Transmission line will be maintained in good condition.
17. Calibration curves will be provided for remote meters.
18. Phase monitor will be properly and regularly calibrated.

19. Properly operating modulation monitor will be provided.
20. Maintenance log will include signed statement of required inspection, record of tower lighting inspection, weekly antenna base current remote meter calibrations and external frequency checks.
21. Engineer in Charge of District will be notified when required.

48. Unlike the operation at WCKD, the Elmhurst operation will have a separate Chief Engineer, a separate general manager (Tr. 756), and an office administrator, Office Manager (Tr. 758–59). In addition, there will be a considerably larger staff and a standard pattern of time in existence (Tr. 736). Although Blotter states that he has never implemented a proposal for operation and administration at WCKD along the lines described in DuPage Ex. 14, pp. 13–14 (Tr. 759–760), he contends that he has learned a lot from this proceeding and will be better equipped to review the transmitter, program and maintenance logs (Tr. 761) to see that they are conforming to the Commission's rules (Tr. 762). These will be reviewed with Mr. Webster and if he disagrees, then with a consulting engineer, with the final decision up to Blotter (Tr. 762). Although Blotter testified he has limited ability to review transmitter logs (Tr. 765, 769), he believed that the transmitter logs at WCKD were being kept in October 1970, in accordance with Commission rules (Tr. 769), though they have not been shown to anybody except Larson (Tr. 769). According to Blotter, he was at the time of hearing examining the transmitter and program logs at WCKD periodically (Tr. 769), and to guard against excessive power he was putting up notices every month (Tr. 776). Blotter states that if the Commission should make an error in writing a license, in the incorrect time, he would ask for a clarification and have the proper license issued (Tr. 914), and that he would not submit to pressures from the community regarding sign-on or sign-off (Tr. 932). Blotter also states that times will be posted in the operators' rooms as well as indicated on the transmitter program logs (Tr. 936). Should the Elmhurst application be granted, Blotter will devote full time to the operation of the station there (Tr. 894).

CONCLUSIONS

1. The facts developed in this proceeding concerning the operation of Station WCKD at Ishpeming, Michigan under the supervision of Mr. Frank Blotter cover six distinct categories of infractions of either the Commission's Rules or the terms of the station license. In the aggregate, they cover a period of 457 days from October 1967 through December 1968. Canyon Broadcasters, Inc. was the licensee of Station WCKD during that time.[32] Mr. Blotter was president, director and 27.6 percent stockholder of Canyon and he is the president, director and 51 percent stockholder of DuPage County Broadcasting, Inc. Canyon was authorized to operate Station WCKD as a Class III station, daytime only, on 970 kHz with a power of 5,000 watts, utilizing a non-directional antenna. Canyon was given pre-sunrise authority on October 30, 1967 to operate the station with 500 watts power.

[32] Subsequent to the hearing, the Commission approved an assignment of the license for WCKD from Canyon to a new owner.

Premature Presunrise Operation (before 6 a.m.)

2. The first category of violations involves the operation of WCKD with pre-sunrise power prior to 6 AM *local standard time* up to the end of August 1968, and prior to 6 AM *local time* thereafter. Section 73.99 of the Rules, as amended September 1, 1968, permitted WCKD to operate with pre-sunrise power beginning at 6 AM *local time* instead of 6 AM *local standard time*. There is no provision in the Rule permitting any deviation in punctuality concerning the commencement or termination of pre-sunrise operation. Apart from violations of 5 minutes or less on 166 days, over the period in question, WCKD began pre-sunrise operation prematurely by 6 minutes and 30 minutes on 2 days in December 1967, 10 minutes on 1 day in March, 17 minutes on 3 days in October, 30 minutes on 1 day in November, 19 minutes on another day in November, 17 minutes on 4 other days in November, 6 minutes and 17 minutes on 2 days in December 1968. Thus, WCKD operated prior to pre-sunrise in excess of 5 minutes on 14 days between the initial violation on October 30, 1967 and the last recorded violation on December 30, 1968. Premature pre-sunrise operation occurred over 3% of the specified period.

Operation With Presunrise Power After Sunrise

3. The second category concerns the operation of Station WCKD with pre-sunrise power after sunrise. This category cannot be tied down as precisely as the first category because operating log entries do not always show when WCKD changed from pre-sunrise to daytime operation. In those instances where not definitely shown, the period over which the infractions took place can only be estimated as any part of an interval between the last pre-sunrise log entry and the first daytime log entry. Forty-six infractions of over five minutes were involved, representing about 10 percent of the total number of days during the period in question. Where the time segment was definitely established, one infraction covered as much as 3 hours and 55 minutes to 4 hours and 35 minutes; another, 2 hours and 22 minutes, and 21 ranged from 13 minutes to 28 minutes. In those instances where the time element fell within a bracket, 14 infractions occurred anywhere from 10 to 55 minutes, and 9 occurred from time of observation to possibly as much as 30 minutes.

Operation With Daytime Power Before Sunrise

4. The third category involves the operation of WCKD with daytime power before sunrise. Apart from nonbracketed violations of 5 minutes or less on 37 days, 134 infractions of longer duration were involved, representing approximately 29 percent of the total number of days in question. Where the time segment was clearly established, one infraction covered 1 hour and 33 minutes, three covered 1 hour and 17 minutes, 26 ranged from 1 hour to 1 hour and 5 minutes, 27 ranged from 30 minutes to 60 minutes, and 46 ranged from 5 minutes to 30 minutes. Thirty-one infractions occurred anywhere from 5 minutes to 60 minutes.

Operation Past Sunset

5. The fourth category involves the operation of WCKD past sunset specified in the station's license on 160 different days representing 35% of the days involved during the period in question. The station signed off late as much as 1 hour and 15 minutes on 2 days, 1 hour and 5 minutes on 1 day, 1 hour on 146 days, 45 minutes on 5 days, and 30 minutes on 6 days.

6. Canyon's request for waiver of the Rules to permit WCKD to sign off one hour after sunset specified in its license was denied by the Commission on January 19, 1968. However, WCKD continued to sign off after sunset 72 times after its receipt [33] or about 21 percent of the 341 days in the balance of the period through December 1968. Of the 73 days, one involved a period of 1 hour and 15 minutes, another 1 hour and 5 minutes, 59 days involved 60 minutes, 5 days involved 45 minutes, and 6 days involved 30 minutes.

7. The controversy as to whether the Ishpeming area was in the Central standard time zone or the Eastern standard time zone extended over the period in question when WCKD signed on and signed off early or late. WCKD's operating logs from October 1967 through December 1968 were kept in Central daylight time from the last Sunday in April 1968 to the last Sunday in October 1968, and in Central standard time for the remainder of the period. Messrs. Blotter and Wesley J. Larson, the latter being the chief engineer at WCKD, never discussed sign-off procedures with each other. Mr. Blotter did not realize that the station had not adhered to its licensed sign-on and sign-off times.

8. Canyon attempted to use sunrise times as specified in a publication issued by the U.S. Naval Observatory for the nearby community of Marquette, Michigan. However, the record demonstrated that, on the basis of 82 operating log entries showing power change from 500 watts to 5,000 watts, 56 percent of the time the sign-on time of WCKD deviated more than 5 minutes from Naval Observatory time but was within 5 minutes 44 percent of the time. Thus, on numerous occasions, Canyon deviated significantly in signing on WCKD even by Naval Observatory time.

Excessive Pre-sunrise and Daytime Power

9. The fifth and sixth categories involves the operation of WCKD with pre-sunrise power and daytime power in excess of 5 percent specified in Section 73.52(a) of the Rules. WCKD's operating logs disclose that the station operated with excessive pre-sunrise power for a total of 27 days and with excessive daytime power for a total of 32 days, representing 6 percent and 7 percent, respectively, of the total of 457 days involved over the period in question. The time span involved on any specific day for pre-sunrise overpower varied anywhere from 17 minutes to 1 hour and 34 minutes on 19 days where the length of time could be definitely ascertained from log entries, and any part of the interval from the time of observation to possibly as much as 34 minutes on 8 other days where the length of time could not be definitely estab-

[33] WCKD received the letter about January 26, 1968.

lished but was bracketed from the last pre-sunrise to the first daytime log entries. The duration of excessive daytime power varied from 30 minutes to 6 hours and 30 minutes and possibly to 7 hours and 31 minutes on 25 days where definitely established from operating log entries and any part of the interval from the time of observation to as much as 1 hour on 7 days where the length of time could not be definitely established. Station WCKD failed to log time when it began to supply power to the antenna on 80 days.[34] This omission was a violation of Section 73.113(a)(1) of the Rules.

ASSESSMENT OF VIOLATIONS

10. As has been found, WCKD frequently began premature pre-sunrise operation for periods involving five minutes or less. There were other violations in this category of more than five minutes duration which were sporadic and did not extend beyond 30 minutes in any instance. The premature commencement of broadcasting, whether for short or long periods, cannot be reasonably justified since the applicable starting time was specified as 6:00 AM local standard time (CST) through March 1968, 6:00 AM local time (CDT) through October 28, 1968, and 6:00 AM local time (CST) thereafter. While split-second timing of the start of operation of a station may not be feasible due to warm-up and other considerations, nevertheless the deviations from prescribed starting times found in this case can only be attributed to negligence. The fact that only one employee was on duty in the early morning hours with several tasks to perform did not excuse the station from punctuality in adhering to the authorized times for its going on the air.

11. The record reflects that Station WCKD, in the period between October 1, 1967 and December 31, 1968, operated with pre-sunrise power after sunrise for about 10% of the total days involved insofar as infractions of more than five minutes a day were involved. Operation of the station with less than required power after sunrise finds no justification in the record and this warrants condemnation as evidencing carelessness with regard to the proper operation of the station.

12. With even greater frequency, Station WCKD operated with daytime power before sunrise. For the period in question, this type of infraction for more than five minutes each day occurred about 29% of the total number of days concerned. The authorized power of WCKD for pre-sunrise operation was 500 watts. WCKD's chief radio operator modified the transmitter from 5,000 watts to 500 watts initially by changing the power output of the transmitter from 5,000 watts to 1,000 watts by means of a switching arrangement designed by the manufacturer and then detuning the antenna loading inductance to bring the power down further until the antenna ammeter indicated about 4 amperes corresponding to approximately 500 watts. No change was made in the electrical constants or circuitry using a kit recommended by the manufacturer. However, an appropriate modification similar to the kit was later made. The former method

[34] This violation is actually distinct from the rest but since it is related to the first category (i.e., premature pre-sunrise operation), it is discussed therein in the findings.

of modifying a transmitter is unorthodox, unauthorized and unacceptable. It may have been the prime factor accounting for the frequent overpower operation of the station. Another factor that may account for excessive pre-sunrise operation of the station stems from a defective antenna ammeter. The indicating needle on the meter at times stopped at 6 amperes on the scale instead of returning to zero after the station signed off at the end of its daytime operation, when normally the antenna current was about 13 amperes. If the radio operator who resumed the pre-sunrise operation did not notice this phenomenon, the indicated antenna current would be 6 amperes instead of about 4 amperes normal for pre-sunrise operation. The cost of the meter is between ten to fifteen dollars but it was not replaced. WCKD's operating log for February 28, 1970, shows the station was still continuing to operate with excessive pre-sunrise power since entries in the log showed antenna current of 6 amperes and 6.1 amperes corresponding to radiated power of about 1,026 watts. Another reason advanced by WCKD's chief radio operator for overpower operation of the station was that the radio operators were perhaps reading the antenna current on modulation peaks. However, the Commission must rely on a station's records as the best evidence of the manner of its operation. The recording of the data of station operation is the obligation of the licensee, and this duty may not be avoided by resort to speculation and disavowal by the licensee of the accuracy of its own records. Moreover, the failure to utilize proper equipment, or to replace defective equipment, or to see that equipment is properly utilized by operators where, as here, the claim is made that the operators were negligent and inaccurate in adjusting a knob for pre-sunrise power, all these merit disapproval as constituting a "sloppy operation", to use the chief engineer's own terminology.

13. As previously mentioned, during the 15-month period involved, WCKD operated beyond its licensed sign-off time on 35% of the days in the 15-month period under consideration. The excessive periods of operation varied from 30 minutes to an hour and 15 minutes. While Frank Blotter attributed the late sign-offs to the confusion prevalent in the area with regard to the applicable time zone, it is clear that he was aware of the proper time to be observed according to the station's license and the time officially deemed applicable by the Department of Transportation and Federal Law. First, Blotter's erroneous assumption that he could sign-off late pending approval of this request to the Commission to do so is difficult to understand. Moreover, the very fact that he did operate under that assumption contravenes his contention that there was any confusion regarding the proper time to be observed. In addition, his testimony indicates that he deemed it best to operate according to the local time preferred by many, if not possibly a majority, of the Ishpeming community. Furthermore, the continued violations for five days after Blotter received the Commission's letter denying his request for waiver indicates laxity on his part. Blotter attributed these late sign-offs to a change in office personnel. But this circumstance called for increased vigilance on his part to see that the proper sign-off time was actually being followed by the new employee in making up the program logs

for the five days in question. Late sign-offs of 30 minutes are unexplained. With regard to the late sign-off during November and December 1968, it is significant to note that if the station had signed off one hour late through confusion there should have been corresponding late sign-ons of one hour. With respect to the late sign-offs, Blotter testified that the decision to sign off late was probably a joint decision between himself and Larson, though Larson recalled no such discussion. Larson, although agreeing it was part of his responsibility to consider the sign-off procedures of the station, also testified he assumed that the office staff took care of it. He subsequently testified it was the owner's responsibility to check program logs with the license. It is obvious that neither Larson nor Blotter reviewed them closely. In any event, to rely on the office personnel to determine proper sign-off time by following old program logs was an abdication of managerial responsibility for that function. That the station signed off late over 70 times after receipt of denial of a waiver request for late sign-off authorization, and that Blotter was not aware of these events, point to the absence of exercise of proper control by him over the station's operation.

14. It has been found that during the 15-month period involved, WCKD operated with pre-sunrise power and daytime power in excess of five percent of its licensed power, in violation of Section 73.52 (a) of the Rules. The frequency of violation represented 6% and 7%, respectively, of the total 457 days of operation. The pre-sunrise infractions are attributable to the utilization of makeshift equipment and objectionable operational procedures, and the daytime excessive power violations can be accounted for only by heedlessness. So, too, the failure on 80 days to record the time when the station began to supply power to the antenna shows a similar degree of inattention to complying with the requirements for proper operation of the station on the technical side. It must be noted that the logging omissions in each instance were violations of Section 73.113(a)(1) of the Rules.

15. The record does not reflect any complaints of actual interference occasioned to other radio stations on account of the various operational violations discussed above. Nor does this case involve any complaint against the programming carried by the station. Nevertheless, the many violations of the Commission's Rules committed by Station WCKD cannot be lightly dismissed. Premature pre-sunrise operation, operation with excessive pre-sunrise and daytime power, and operation beyond authorized daytime hours—all these infringe upon the protection afforded to other radio stations and carry the potential for interference with the broadcasts of other stations.

16. Nor can the violations by WCKD be condoned on the grounds of financial hardship and limited personnel. For it is the obligation of a station licensee to observe the Commission's Rules notwithstanding the particular economic problems experienced by an owner. Otherwise, the protection afforded to both other stations and the listening public by the applicable rules would depend upon the inclination and whim of any station owner who sees fit to operate his facility according to his personal situation, and chaos would ensue.

17. It is true that Frank Blotter was dependent upon his chief engineer with regard to the technical aspects of station operation. Nevertheless, premature pre-sunrise operation and failure to observe licensed sign-off times are not matters which fall within the exclusive technical competency of an engineer. Accordingly, Mr. Blotter could be expected to be knowledgeable at least about these areas of station operation. Moreover, he had to be aware of the need to use proper equipment for reduction of power for pre-sunrise operation after receiving a Commission telegram referring to the use of a "kit furnished by transmitter manufacturer to reduce transmitter output power". It is not an exaggeration to say that the many violations which characterized the operation of WCKD could not have taken place if Mr. Blotter had properly discharged his responsibility as the holder of a one-quarter interest in the licensee and the only stockholder who was actively engaged in the daily operation of the station. The continuing violations were deliberate on his part insofar as initial operation beyond licensed hours were concerned and were the consequence of inattention and lack of adequate supervisory control as far as the remaining violations were concerned. The Examiner concludes that Mr. Blotter's "extreme carelessness", to use the Broadcast Bureau's phrase, led to conditions at the station which made inevitable many, if not all of the violations which happened.

18. DuPage has propounded a comprehensive and detailed plan for the technical operation of its proposed Elmhurst station. It has selected a well qualified and very experienced first-class engineer to supervise and implement its operational and logging proposals. Although the organization of the Elmhurst proposal represents an attempt to avoid the recurrence of the derelections at WCKD, the poor history of the technical and other aspects of the station's operation under the management of Mr. Blotter as developed in the hearing after remand has engendered little confidence that the Elmhurst proposal will be free from violations of the Commission's Rules. Granting that Elmhurst should provide a more advantageous economic base for the proposed station's operation, that there should be no occasion for confusion as to applicable time zone, and the pre-sunrise operation should not be complicated by the equipment modification problems which obtained at WCKD, still these considerations are more than counterbalanced by the notable lack of responsible and competent managerial supervision by Blotter which attended his operation of the small station at Ishpeming. Particularly glaring is his lack of apprehension and his misconstruction of Commission communications and policy. Although Lois Blotter's recommendations from her present employer and her employment record are impressive, she has had no experience in the broadcast field and she cannot be expected to fulfill the managerial duties of Frank Blotter's job, in addition to her own responsibilities under the Elmhurst proposal. In evaluating the prospects for a trouble-free operation at Elmhurst, the violation-ridden track record of Mr. Blotter at WCKD makes it impossible to predict a violation-free operation at Elmhurst dissimilar from that at Ishpeming. There is nothing in the record to indicate that Frank Blotter's declarations to review station's logs, and to assume

primary responsibility for the station's operations, are anything more than self-serving statements and, consequently should not be relied upon in making a determination on the remand issues. Therefore, it is concluded that DuPage County Broadcasting, Inc., of which Mr. Blotter is the principal stockholder, cannot reasonably be expected to exercise diligently that degree of licensee responsibility required of the operator of a broadcast facility. It follows also that the public interest would not be served by permitting Mr. Blotter to acquire an interest in a broadcast authorization for an Elmhurst station, nor would it be served by a grant of the DuPage County Broadcasting, Inc. application. The foregoing conclusions require vacating the grant of a construction permit to DuPage which was proposed in the Initial Decision and the denial of its application for an Elmhurst station.

19. The Commission, in remanding this proceeding for further hearing, indicated its belief, that, in event of denial of the DuPage application for an Elmhurst station, the overall public interest would be better served by an award to Central or the denial of both applications. Moreover, it left for determination by the Examiner what disposition of this proceeding under these alternatives would best serve the public interest.

20. Central possesses the basic qualifications (legal, financial and technical) to become a licensee. If its application did not conflict with that of DuPage, there would be no obstacle to a grant thereof. As found in the Initial Decision, the Central proposal would provide a first local AM station to Wheaton, Illinois, which has a population of 30,910 persons, according to preliminary 1970 U.S. Census data. Wheaton is the County Seat of DuPage County, in which Elmhurst is also located, and is centrally located in the county. Central's proposed station would completely encompass the proposed service area of DuPage, would provide a 5 mv/m signal to Elmhurst, and would serve some 15,579 persons within DuPage County who would not be served by the Elmhurst station proposal. The service area of Central would extend further to the west from Chicago than the Elmhurst proposal. There is a presumptive need for the service from a first Wheaton AM station since the community has its own local government, customary local municipal services, and its own civic and commercial service organizations and clubs, as well as schools and churches. Based on the foregoing considerations, it is concluded that the public interest would well be served by a grant of Central's application in the absence of a grant to DuPage,[35] and that the denial of the Central application in the Initial Decision should be vacated.

In view of the foregoing, IT IS ORDERED, That, unless an appeal to the Commission from this Supplemental Initial Decision is taken by any of the parties or the Commission reviews the Initial Decision on

[35] In the Initial Decision, the Examiner concluded that Central's proposal would be preferred under the contingent standard comparative issue although Section 307(b) factors were found to favor the DuPage proposal.

its own motion in accordance with the provisions of Section 1.276 of the Rules:

(a) The conclusion in the Initial Decision that the public interest would be better served by a grant of the DuPage application, with the application of Central being denied, IS VACATED;

(b) The application of Howard L. Enstrom and Stanley G. Enstrom, d/b as Central DuPage County Broadcasting Company, for a new Class II standard broadcast station at Wheaton, Illinois, to operate on 1530 kHz, daytime only, with a power of 500 watts, utilizing a directional antenna system, IS GRANTED, subject to the following condition:

"Any pre-sunrise operation must conform with Sections 73.87 and 73.99 of the Rules, as amended June 28, 1967 (32 FR 10437), supplementary proceedings (if any) involving Docket No. 14419, and/or the final resolution of matters at issue in Docket No. 17562."

(c) The application of DuPage County Broadcasting, Inc., for a new Class II standard broadcast station to operate on 1530 kHz, daytime only, with a power of 250 watts, utilizing a directional antenna system, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
ISADORE A. HONIG, *Hearing Examiner.*

F.C.C. 73-238

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 74 AND 78 OF THE COMMISSION'S RULES AND REGULATIONS AS CONCERNS APPLICATIONS FOR CHANGES IN HEIGHT OR DIRECTION OF AN ANTENNA, AND OTHER RESPECTS	Docket No. 19582

REPORT AND ORDER

(Adopted March 2, 1973; Released March 7, 1973)

BY THE COMMISSION:

1. By Notice of Proposed Rule Making, adopted August 29, 1972 (37 F.R. 18569), the Commission proposed amendment to Sections 74.451; 74.551(a); 74.651(a); 74.751(b); 74.851(a); 74.951(a); and 78.109(a) of the Commission's Rules and Regulations, relating to remote pickup, aural STL and intercity relay, television auxiliary, television translator, television booster, Instructional Television Fixed Service, and cable television relay services, and more particularly the requirements for filing applications for changes in facilities where possible airspace problems are presented.

2. The Notice pointed out that one of the purposes of the rule making was that any application for change of antenna height for the various services covered by Part 74 and Section 78.109 of the Rules be coextensive with the requirements of Part 17 unless other requirements are deemed necessary. In the latter respect, we also proposed changes in provisions concerning the application-filing requirements where a horizontal change in antenna location is involved to bring the provisions of the Rules into harmony with Part 17. Editorial changes were also proposed for internal consistency with other rules.

3. These proposals were made by the Commission *sua sponte*. No one has filed comments either in favor of or opposing the proposed change. We would suppose that the absence of comments more or less reflects agreement with the proposals. In the circumstances, an extended discussion is unnecessary, inasmuch as it is quite clear that the proposals are deemed meritorious. With the exception of Section 74.451, these Rules are being adopted as proposed, and that one is being adopted in a form consistent with the other rule changes.

4. Accordingly, under the authority of Sections 4(i) and (j) and Section 303(r) of the Communications Act of 1934, as amended, Part

74 and Section 78.109(a) IS AMENDED as set forth in the attached appendix. These amendments shall go into effect April 16, 1973.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

1. Section 74.451 is amended to read as follows:

§ 74.451 *Equipment changes.*

(a) Prior Commission approval is required for any change in the overall height of the antenna structure except where notice to the Federal Aviation Administration is specifically not required under § 17.14(b) of this chapter.

(b) The licensee of a remote pickup broadcast station may make any other changes in the equipment that are deemed desirable or necessary provided:

(1) That the operating frequency is not permitted to deviate more than the allowed tolerance;

(2) That the emissions are not permitted outside the authorized band;

(3) That the power output complies with the license and the regulations governing the same; and

(4) That the transmitter as a whole or output power rating of the transmitter is not changed.

(c) Other equipment changes not specifically referred to in this section may be made at the discretion of the licensee: *Provided,* That the Engineer in Charge of the radio district in which the station is located and the Commission in Washington, D.C. are promptly notified in writing upon the completion of such changes, and further that the changes are set forth in the next application for renewal of license.

2. In Section 74.551(a), subparagraph 4 is amended to read as follows:

§ 74.551 *Equipment changes.*

(a) * * *

(4) Any change in the overall height of the antenna structure, except where notice to the Federal Aviation Administration is specifically not required under § 17.14(b) of this chapter.

* * * * * * *

3. In Section 74.651(a), subparagraph (4) is amended and subparagraph (5) is added to read as follows:

§ 74.651 *Equipment changes.*

(a) * * *

(4) Any change in the overall height of the antenna structure, except where notice to the Federal Aviation Administration is specifically not required under § 17.14(b) of this chapter.

(5) Any change in the direction of the main radiation lobe of the transmitting antenna.

* * * * * * *

4. In Section 74.751(b), subparagraphs (3) and (5) are amended to read as follows:

§ 74.751 *Equipment changes.*

* * * * * * *

(b) * * *

(3) Any change in the overall height of the antenna structure, except where notice to the Federal Aviation Administration is specifically not required under § 17.14(b) of this chapter.

* * * * * * *

(5) Any horizontal change in the location of the antenna structure which would (i) be in excess of 500 feet, or (ii) require notice to the Federal Aviation Administration pursuant to § 17.7 of this chapter.

• • • • • • •

5. In Section 74.851(a), subparagraphs (3), (5), (6), and (7) are amended and (8) is added to read as follows:

§ 74.851 *Equipment changes.*

(a) * * *

(3) Any change in the overall height of the antenna structure, except where notice to the Federal Aviation Administration is specifically not required under § 17.14(b) of this chapter.

• • • • • • •

(5) Any change in the location of the transmitter except a move within the same building or upon the same tower or pole.

(6) Any horizontal change in the location of the antenna structure which would (i) be in excess of 500 feet, or (ii) require notice to the Federal Aviation Administration pursuant to § 17.7 of this chapter.

(7) A change of frequency assignment.

(8) A change of authorized operating power.

• • • • • • •

6. In Section 74.951(a), subparagraphs (3), (4), (5), (6), and (7) are amended and (8) is added to read as follows:

§ 74.951 *Equipment changes.*

(a) * * *

(3) Any change in the overall height of the antenna structure, except where notice to the Federal Aviation Administration is specifically not required under § 17.14(b) of this chapter.

(4) Any horizontal change in the location of the antenna structure which would (i) be in excess of 500 feet, or (ii) require notice to the Federal Aviation Administration pursuant to § 17.7 of this chapter.

(5) Any change in the transmitter control system.

(6) Any change in the location of the transmitter except a move within the same building or upon the same tower or pole.

(7) A change of frequency assignment.

(8) A change of authorized operating power.

• • • • • • •

7. In Section 78.109(a), subparagraphs (3), (4), (5), (6), and (7) are amended and subparagraph (8) is added to read as follows:

§ 78.109 *Equipment changes.*

(a) * * *

(3) Any change in the overall height of the antenna system except where notice to the Federal Aviation Administration is specifically not required under § 17.14(b) of this chapter.

(4) Any horizontal change in the location of the antenna (other than a CAR pickup station transmitter).

(5) Any change in the transmitter control system.

(6) Any change in the location of a station transmitter (other than a CAR pickup station transmitter), except a move within the same building or upon the tower or mast or a change in the area of operation of a CAR pickup station.

(7) Any change in frequency assignment.

(8) Any change in authorized operating power.

• • • • • • •

F.C.C. 73-206

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of REQUEST, FOR ISSUANCE OF TAX CERTIFICATE FOR SALE OF INTEREST IN A CABLE TELEVISION SYSTEM PURSUANT TO SECTION 76.501(a)(2) OF THE COMMISSION'S RULES, BY FISHER'S BLEND STATION, INC. Re Cable Television Systems, Serving the Seattle, Wash., Area	File No. CTAX-12

MEMORANDUM OPINION AND ORDER

(Adopted February 21, 1973; Released February 28, 1973)

BY THE COMMISSION:

1. In our *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816, we adopted Section 76.501 (originally designated Section 74.1131) of the Commission's Rules, which, inter alia, prohibits cross ownership, operation, control, or interest of a cable television system with a local television broadcast station, and requires divestiture where necessary to eliminate such existing proscribed cross-relationships.[1] In paragraph 16 of that report and order we noted that such divestitures can be effected without payment of capital gains tax if the "involuntary conversion" provisions of the Internal Revenue Code are applicable.[2] On January 26, 1972, in *Cosmos Cablevision Corporation*, 33 FCC 2d 293, we granted the first two tax certificate applications pursuant to our new cable television cross-ownership rules.

2. Now before it is an application for a Section 1071 tax certificate, filed in August 1972 by Fisher's Blend Station, Inc. ("Fisher"), licensee of Station KOMO-TV, Seattle, Washington, with respect to Fisher's transfer of its stockholdings in United Community Antenna System, Inc. ("UCAS"), to Viacom International, Inc. ("Viacom").

3. In support of its application, Fisher states the following: (a) Fisher and its predecessor, Fisher Television Company, have held the license of KOMO-TV since 1953. (b) Prior to December 27, 1966,

[1] Section 76.501 provides, in pertinent part: "(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in: . . . (2) a television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers . . ."

[2] Section 1071 of the 1954 Internal Revenue Code provides that, "If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in policy or the adoption of a new policy by the [Federal Communications] Commission with respect to the ownership or control of radio broadcast stations, such sale or exchange shall, if the stockholder so elected, be treated as an involuntary conversion of such property within the meaning of section 1033."

Fisher, King Videocable Company, and KIRO, Inc., each held a one-third interest in UCAS. King Videocable was cross-owned with Station KING–TV, Seattle; KIRO, Inc., was the licensee of Station KIRO–TV, Seattle. (c) On December 27, 1966, UCAS bought the assets of Master Television Antenna System, Inc. ("Master"), operator of a cable television system within the city limits of Seattle. As a result of that transaction, the interests of UCAS's stockholders were changed to: Fisher, 24%; King Videocable, 24%; KIRO, Inc., 24%; and Tele-Vue Systems, Inc., 28%. (d) On April 30, 1969, UCAS bought all of the outstanding shares of Vista Television Cable, Inc. ("Vista"), operator of a cable system outside of the city limits of Seattle (on the east side of Lake Washington, from the Lake Samanish area to the Bothell area). (e) Both the Master system and the Vista system are within the predicted Grade B contour of Fisher's Station KOMO–TV. (f) In compliance with the divestiture requirements of Section 76.501 (originally Section 74.1131)', Fisher (along with King Videocable and KIRO, Inc.) on March 29, 1972, agreed to sell and did sell its interest in UCAS to Viacom International, Inc. ("Viacom"), a company in which Fisher has no stock interest. (g) In July 1972, the Commission approved the issuance of a tax certificate to King Videocable with respect to the same divestiture transaction; the same circumstances justifying a tax certificate in that case [3] apply in the present matter also.

4. The impact of Section 76.501 is that, if a cable television system which has a cross-interest relationship with a co-located television broadcast station proposes to carry the signal of any television station (i.e., perform a key function by which the term "cable television system" is defined), there must be a divestiture of the interest in either the cable television system or the television broadcast station. Thus, a divestiture of the interest in either the system or the station, in compliance with the requirements of Section 76.501, is clearly "necessary or appropriate" to effectuate a new policy by the Commission with respect to ownership and control of television stations and cable television systems.

5. In view of the foregoing, including Fisher's assertions of fact as set forth in paragraph 3 supra, we find that the sale by Fisher's Blend Station, Inc., of its above-described interest in UCAS's Seattle, Washington, area cable television systems was necessary or appropriate to effectuation of the new policy adopted by the Commission and reflected in Section 76.501 of our Rules, with respect to the ownership and control of television stations and cable television systems.

Accordingly, IT IS ORDERED, That there BE ISSUED to Fisher's Blend Station, Inc., the tax certificate appended hereto, certifying that its sale of its interest in the above-referenced cable

[3] *King Videocable Company*, 25 FCC 2d 583. In November 1972, KIRO, Inc. was also issued a tax certificate with respect to that transaction (*KIRO, Inc.*, 37 FCC 2d 1034).

television systems was necessary or appropriate to effectuation of the new policy adopted by the Commission with respect to the ownership and control of television stations and cable television systems.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

Fisher's Blend Station, Inc., licensee of Station KOMO-TV, Seattle, Washington, has reported to the Commission its sale on March 29, 1972, of its interest in United Community Antenna Systems, Inc., operator of a cable television system in Seattle, Washington, and sole owner of Vista TV Cable, Inc., operator of a cable television system at the east side of Lake Washington, from the Lake Samanish area to the Botheel area in King County, Washington, to effectuate compliance with Section 76.501 of the Commission's Rules with respect to ownership and control of cable television systems and television broadcast stations.

It is hereby certified that the sale of Fisher's Blend Station, Inc.'s interest in these cable systems was necessary or appropriate to effectuate the Commission's new rule and policy prohibiting cross ownership, operation, control, or interest of a cable television system with a local television broadcast station, and, in particular, to effectuate compliance with the provisions of Section 76.501 (originally designated 74.1131) of the Commission's Rules, adopted June 24, 1970, and released July 1, 1970, in the *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816.

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand this 21st day of February, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

109-030—73——5

F.C.C. 73-241

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re FLAGLER CABLE CO., INC., FLAGLER BEACH, FLA. For Certificate of Compliance	CAC-1594 FL254

MEMORANDUM OPINION AND ORDER

(Adopted March 2, 1973; Released March 7, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND H. REX LEE CONCURRING IN THE RESULT

1. On November 13, 1972, Flagler Cable Company, Inc. filed the above-captioned application for a certificate of compliance to offer cable television service at Flagler Beach, Florida, a small community of approximately 950 persons in the Orlando-Daytona Beach, Florida, television market (#55). The following Florida television broadcast signals are proposed for carriage: WESH-TV (NBC), Daytona Beach; WDBO-TV (CBS), WFTV (ABC), Orlando; WJXT (CBS), WJCT (Educ.), Jacksonville. Rust Craft Broadcasting Company, licensee of Station WJKS-TV (ABC), Jacksonville, and ITT Community Development Corporation, a real estate developer in the area, opposed the application, and Flagler Cable has replied.

2. Rust Craft objects to the application on the grounds: (a) that Flagler Cable's franchise may be invalid; and (b) that it would be unfair for WJXT to be carried if WJKS-TV is not. The franchise is claimed to be invalid since it requires the first five channels to be carried on the cable system be VHF only: WJKS would not qualify for carriage as it is a UHF station. Because signal carriage matters are exclusively within the jurisdiction of the Federal Communications Commission, Rust Craft asserts the franchise "goes beyond the pale." Rust Craft objects to the proposal to carry WJXT and not WJKS-TV on the ground that both stations place predicted Grade B contours over Flagler Beach. Rust Craft argues further that WJKS-TV faces strong local competition from WJXT and other Jacksonville stations, so that any competitive advantage afforded WJXT will work to the certain disadvantage of WJKS-TV.

3. ITT Community Development Corporation (ICDC) holds large tracts of land in Flagler County which it intends to develop as a residential community. Its stated concern is for "all aspects of community life and facilities in the area" including cable television. ICDC asserts that Flagler Cable's franchise (adopted March 9, 1972) does not comply with the requirements of Section 76.31 of the Commission's Rules. Although the franchise antedates the effective date of the new cable television rules, ICDC contends that it should nonetheless be

judged against their provisions because of the wide notoriety of these rules upon their adoption in February, 1972—an argument we deem to be irrelevant. ICDC lists the following franchise deficiencies: (a) there is no showing that it was awarded pursuant to a public proceeding; (b) it does not require that a significant amount of construction be accomplished within one year of Commission certification; (c) the initial term is 20 years, which is in excess of the Commission's 15-year limit; (d) it permits Flagler Cable to raise its subscriber rates without a public hearing; (e) no provision is made for the resolution of subscriber complaints nor the establishment of a local business office; (f) there is no provision for the incorporation in the franchise of any future changes in Section 76.31 of the Rules.

4. In reply to Rust Craft, Flagler Cable argues that its franchise has been misconstrued. The franchise requires only that the first five television signals carried—whether UHF or VHF in origin—be transmitted to subscribers as VHF channels. And as for the theory that WJKS–TV should be carried if WJKX is available to its subscribers, Flagler Cable states that it will be willing to provide WJKS–TV's signal if the Commission's rules authorized such carriage. Since WJKS–TV is not significantly viewed in Flagler County, only a waiver of Section 76.63 of the Rules—the applicable signal carriage rules—can permit its carriage. Neither Rust Craft nor Flagler Beach has requested a waiver of Section 76.63, and it would be premature for us to rule upon such a matter before an appropriate request has been made and comments thereon have been received. On the basis of what has been submitted, we find Flagler Beach's response to be a persuasive rejoinder to Rust Craft's opposition to its application.

5. The record does not indicate that—in fact—either Flagler Cable or the City of Flagler Beach knew the provisions of our proposed rules when they agreed to the franchise. The other contentions of ICDC were answered by Flagler Cable as follows: (a) a public proceeding attended the award of the franchise, and minutes of the City Commission's meeting are submitted as corroboration; (b) while the franchise only requires "prompt" construction, the applicant avers the system will be operating within one year and completely installed in three years; (c) the initial franchise duration of 20 years was not *per se* illegal until the *Reconsideration of The Cable Television Report and Order* was adopted several months after the franchise's award; (d) while the franchise does not specify that subscriber rates can only be increased after a public hearing, all rates must be reasonable or the cable system will be subject to penalties imposed in a public hearing; (e) the franchise requires the system to be operated in accordance with the Commission's rules, which includes establishment of a local office to act on subscriber complaints; and (f) the franchise requires all applicable regulations of the Commission to be adhered to, which appears to satisfy the requirement that all new rules be incorporated into the franchise within one year. Under the circumstances described above, we are satisfied that there has been substantial compliance with our franchise requirements and that a certificate of compliance should be issued until March 31, 1977. *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the application (CAC–1594) for a certificate of compliance filed by Flagler Cable Company, Inc., IS GRANTED, and an appropriate certificate of compliance will be issued.

IT IS FURTHER ORDERED, That the "Objection of Rust Craft Boardcasting Company, WJKS–TV, Jacksonville, Florida", filed January 3, 1973, IS DENIED.

IT IS FUTHER ORDERED, That the "Comments of ITT Community Development Corporation" filed January 3, 1973, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-239

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (UNION SPRINGS AND TALLASSEE, ALA.)	Docket No. 19628 RM-1902, RM-2040

FIRST REPORT AND ORDER

(Adopted March 2, 1973; Released March 7, 1973)

BY THE COMMISSION:

1. The Commission has before it the Notice of Proposed Rule Making released November 13, 1972 (37 Fed. Reg. 24369) proposing an amendment of Section 73.202(b) of the Rules, the FM Table of Assignments. The rule making was instituted on the basis of two petitions for assignment of the same FM channel to neighboring communities resulting in a channel conflict. The petition filed by Ne-Ler Company, licensee of Station WTLA, Tallassee, Alabama, proposed assignment of Channel 240A to Tallassee, Alabama. The petition filed by Union Springs Broadcasting Company (Union Springs) proposed the assignment of Channel 240A to Union Springs, Alabama. This Report and Order concerns only the petition for the assignment at Union Springs, RM-1902. At a later date a Report and Order will be issued on the remaining petition.

2. The Notice observed that since the distance between Tallassee and Union Springs is 28 miles, Channel 240A cannot be assigned to each of the two communities (required spacing is 65 miles). To resolve the conflict we proposed to assign Channel 240A to Tallassee and Channel 265A to Union Springs, provided that the transmitter site of a Union Springs station is located at least 4 miles southwest of the community in order to meet the spacing requirement with respect to Station WCJM at West Point, Georgia, operating on Channel 265A. A counterproposal timely filed in this proceeding by All Channel TV Service, Inc., proposes to assign Channel 240A to Tuskegee, Alabama, rather than to Tallassee.

3. On January 15, 1973, Union Springs Broadcasting Company filed a Motion to Sever and Request for Immediate Allocation of Channel 265A to Union Springs stating that the only remaining conflict in this proceeding is that between the proposals to assign Channel 240A to Tallassee or Tuskegee, and that Channel 265A can be assigned to Union Springs without regard to either Tallassee or Tuskegee. The motion further states that although Channel 265A at Union Springs can meet spacing requirements with regard to Station WCJM, West Point, Georgia, if located at either Tallassee or Tuskegee, it cannot. In view

of this, it states, it is appropriate for the Commission to severe the Union Springs proposal and make the assignment immediately. We believe it would be in the public interest to sever the proposal for Union Springs, Alabama, and grant the assignment of Channel 265A to that community since Channel 265A cannot be used at either Tallassee or Tuskegee.

4. A supporting comment was filed by Union Springs Broadcasting Company, stating its acceptance of the suggested proposed Channel 265A and reiterated its intent to apply for the channel, if assigned, and to construct a station promptly, if authorized. There were no opposing comments. As indicated in paragraph 2 above, this assignment can be made in conformance with the Commission's minimum mileage separation rule, providing the transmitter site is located at least 4 miles southwest of Union Springs. In the Notice of Proposed Rule Making we set out economic and other information pertaining to the need for a first FM assignment to Union Springs, Alabama. That information is accepted as being substantially correct and will not be repeated here, except to say that there are no aural or television facilities authorized or operating in Union Springs or Bullock County (populations 4,323 and 11,824, respectively). The assignment of Channel 265A would thus provide for a first local broadcast facility there.

5. The authority for the action taken herein is contained in Sections 4(i), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended.

6. Accordingly, IT IS ORDERED, that effective April 16, 1973, the Table of FM Assignments (Section 73.202(b) of the Rules) IS AMENDED with respect to the community listed below to read as follows:

City	*Channel No.*
Union Springs, Ala	265A.

7. IT IS FURTHER ORDERED, That the Motion to Sever and Request For Immediate Allocation of Channel 265A to Union Springs, Alabama, filed January 15, 1973, by Union Springs Broadcasting Company, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-205

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re GREATER LAWRENCE COMMUNITY ANTENNA, INC., LAWRENCE, MASS. For Certificate of Compliance	CAC-1002 MA056

MEMORANDUM OPINION AND ORDER

(Adopted February 21, 1973; Released March 1, 1973)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT.

1. On August 9, 1972, Greater Lawrence Community Antenna, Inc., filed the above-captioned application for certificate of compliance to begin cable television service at Lawrence, Massachusetts, a community of 66,216 persons, located in the Boston-Cambridge-Worcester, Massachusetts television market (#4). The applicant proposes to carry the following television broadcast signals: WBZ-TV (NBC), WCVB-TV (ABC), WNAC-TV (CBS), WGBH-TV (Educ.), WGBX-TV (Educ.), WSBK-TV (Ind.), WQTV (C.P.), all Boston, Massachusetts; WKBG-TV (Ind.), Cambridge, Massachusetts; WSMW-TV (Ind.), Worcester, Massachusetts; WMUR-TV (ABC), WXPO-TV (C.P.), both Manchester, New Hampshire; WENH-TV (Educ.), Durham, New Hampshire; WCSH-TV (NBC), Portland, Maine; WJAR-TV (NBC), WPRI-TV (CBS), both Providence, Rhode Island. Greater Lawrence asserts the right to carry the above-listed signals pursuant to Section 76.65 of the Commission's Rules.[1]

2. On October 2, 1972, New Boston Television, Inc., licensee of Station WSBK-TV, Boston, Massachusetts, filed an opposition to this application.[2] New Boston objects to Greater Lawrence's application to the extent it proposes carriage of the out-of-market network signals of WCSH-TV, WJAR-TV, and WPRI-TV. New Boston claims that Greater Lawrence's proposed signals are not in fact "grandfathered" pursuant to Section 76.65 of the Rules. And, if these signals are not grandfathered, then carriage of WCSH-TV, WJAR-TV, and WPRI-TV is inconsistent with Section 76.61 of the Rules, and should not be permitted.[3] The basis of New Boston's position is that Greater Law-

[1] Section 76.65 of the Rules provides in pertinent part that: "The provision of §§ 76.67, 76.59, 76.61, and 76.63 shall not be deemed to require the deletion of any television broadcast or translator signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972 * * *."

[2] On October 24, 1972, Greater Lawrence filed a "Reply to Opposition," and on October 30, 1972, New Boston filed a "Motion to Accept Additional Pleading" and a "Supplement to Opposition." These pleadings are considered below.

[3] Carriage of the other signals proposed by Greater Lawrence is consistent with Section 76.61 of the Rules.

rence's claim to grandfathered status is based on a notification filed pursuant to former Section 74.1105 of the Rules, which allegedly was not perfected before March 31, 1972, the effective date of the Commission's present cable television rules. Thus, it is argued that Greater Lawrence was not "*authorized* to carry . . . *prior* to March 31, 1972 (emphasis supplied)" its requested signals pursuant to Section 76.65 of the Rules.

3. The following circumstances led to this controversy. On February 22, 1972, Greater Lawrence tendered for filing a letter dated February 14, 1972, which was intended to serve as a Section 74.1105 notification of proposed service. The notification was technically deficient in two respects: first, Greater Lawrence had failed to furnish copies of the notifications sent to each party entitled to notification; and, second, Greater Lawrence failed to tender the filing fee required by Section 1.1102(a) of the Rules. On February 25, 1972, Greater Lawrence was notified that its notification could not be accepted for filing, because of the deficiencies noted above. On March 6, 1972, Greater Lawrence filed its notification in proper form and its notification of proposed service was accepted for filing. *Inter alia*, Greater Lawrence states that its notifications were sent to the appropriate parties February 14, 1972.

4. New Boston argues that former Section 74.1105(c)[4] of the Rules allowed 30 days after notification for objections to proposed service to be filed, and since Greater Lawrence's notification was not accepted for filing until March 6, 1972, it was impossible for this 30 day period to run since the new cable television rules became effective March 31, 1972. Thus, it claims that even though no objections were filed to the notification of proposed service, Greater Lawrence's proposed signals were not authorized prior to March 31, 1972. In its reply, Greater Lawrence argues that the 30 day period for objection to Section 74.1105 notifications ran from the date notice was given parties entitled to notice pursuant to Section 74.1105(a) of the Rules.[5]

5. We must reject New Boston's argument. The 30 day objection period of Section 74.1105 was intended to run from the date the notification was filed with the Commission. One of the functions of former Section 74.1105(a) of the Rules was to assure notice to interested parties, but it was also intended that copies be timely filed with the Commission to allow it to be aware of new proposals. Usually, the only date which the Commission could have relied on with certainty was the date on which Section 74.1105 notifications were filed. But in the present case, Greater Lawrence originally attempted to file its

[4] Former Section 74.1105(c) of the Rules provided, in part, that: "(c) Where a petition with respect to the proposed service is filed with the Commission * * * within thirty (30) days after notice, new service which is challenged in the petition shall not be commenced until after the Commission's ruling on the petition or on the interlocutory question of temporary relief pending further procedures; . . . Where no petition * * * has been filed within thirty (30) days after notice, service may be commenced at any time thereafter * * *."

[5] Former Section 74.1105(a) of the Rules provided in pertinent part that: "No CATV system shall commence operations in a community * * * unless the system has given proper notice of the proposed new service to the licensee or permittee of any television broadcast station within whose predicted Grade B contour the system operates or will operate * * * and has furnished a copy of each such notification to the Federal Communications Commission * * * no CATV shall commence such operations until thirty (30) days after notice has been given * * *."

Section 1105 notification February 22, 1972. The notification was returned to Greater Lawrence giving it 30 days to correct its deficiencies, which Greater Lawrence did. Under these circumstances, we believe it appropriate to accept the notification *nunc pro tunc* February 22, 1972, and thus its signals are grandfathered. Compare *Berwick* v. *Federal Communications Commission*, 109 U.S. App. D.C. 214, 286 F. 2d 97 (1960); also see *Johnston Broadcasting Co.* v. *Federal Communications Commission*, 85 U.S. App. D.C. 40, 175 F. 2d 351 (1949); *City Cabs, Inc.* v. *Federal Communications Commission*, 107 U.S. App. D.C. 136, 137, 275 F. 2d 165, 166 (1960). New Boston was given notification of proposed service long before the end of February 1972, a fact that New Boston does not deny. New Boston thus had ample opportunity to object to Greater Lawrence's proposed signals at that time, and now, many months later, to allow it to come in and object to the notification would be inequitable. Compare *West Valley Cablevision, Inc.*, 19 FCC 2d 431 (1969).

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Application" filed by New Boston Television, Inc., on October 2, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application (CAC–1002) for certificate of compliance IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-245

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
GARY LANE, ESQ., AGAINST NATIONAL BROADCASTING CO.

ORDER

(Adopted March 2, 1973; Released March 6, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has before it an Application for Review filed on December 6, 1972 by Gary Lane, Esquire, of the ruling of the Broadcast Bureau of November 10, 1972.

2. We have examined the pleadings herein and believe that the Bureau's ruling was correct. However, it should be noted that this routine fairness ruling points up a most important principle and merits some comment.

3. The complainant's concern here, based particularly on his differing viewpoint with respect to the SCAB's record and duties, is not a frivolous one. Without question, Mr. Brinkley's remarks presented a one-sided view concerning the SCAB. However, the commentary contained only one passing reference to the SCAB, the thrust of the commentary being focused on the personal history and retirement of Mr. Otepka. Cf. *Healey* v. *FCC*, 460 F. 2d 917 (CADC, 1972). In *National Broadcasting Co.*, 25 FCC 735, 736-37 (1970), quoted at length in the Bureau's ruling in this case, we set out the guiding principles as to the application of the fairness doctrine to passing references in news programs. Those principles undoubtedly result in less than perfect fairness being achieved. But the crucial consideration is whether, on balance, Governmental intervention to attempt to secure perfect fairness will serve the public interest. We have concluded that it will not. For, under the guise of enforcing the fairness doctrine we cannot become the national arbiter of the fairness or accuracy of every observation, statement or casual comment in the tens of thousands of newscasts by thousands of broadcast licensees. Such a course of pervasive and undue intervention into the journalistic process would serve neither the overriding goal of the First Amendment nor the public interest standard of the Communications Act.

4. Accordingly, pursuant to Section 1.115(i) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-243

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
MAHONING VALLEY CABLEVISION, INC., LIBERTY TOWNSHIP, OHIO	CAC-824, CSR-164, OH209
WEATHERSFIELD TOWNSHIP, OHIO	CAC-826, CSR-165, OH211
WARREN TOWNSHIP, OHIO	CAC-827, CSR-163, OH212
HOWLAND TOWNSHIP, OHIO	CAC-828, CSR-166, OH213
VIENNA TOWNSHIP, OHIO	CAC-833, CSR-168, OH215
CHAMPION TOWNSHIP, OHIO	CAC-834, CSR-167, OH216
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted March 2, 1973; Released March 7, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE CONCURRING AND ISSUING A STATEMENT.

1. On July 7, and 9, 1972, Mahoning Valley Cablevision, Inc., proposed operator of cable television systems in the above-captioned communities (located in the 79th television market) filed applications requesting certification for the following Ohio television signals: WFMJ-TV (NBC), WKBN-TV (CBS), WYTV (ABC), Youngstown; WUAB (Ind.) Lorain, and WKBF (Ind.), WVIZ-TV (Educ.), WKYC-TV (NBC), WEWS-TV (ABC), and WJW-TV (CBS), Cleveland, Ohio. Simultaneously, Mahoning filed petitions for Special Relief requesting partial waiver of Section 76.31 of the Commission's Rules.[1]

2. On August 21, 1972, Summit Radio Corporation, licensee of Station WAKR-TV (ABC), Akron, Ohio, advised the Commission that it had informed Mahoning that carriage of WAKR-TV is required on the proposed cable television systems at Warren Township and Champion Township pursuant to Section 76.61(a)(1) of the Rules because these communities are partially within WAKR-TV's 35-mile zone. WAKR-TV further stated that Mahoning agreed to carriage

[1] Opposition to the applications filed by the Trumbull County NAACP was withdrawn on January 3, 1973, following an agreement between Mahoning and the NAACP dealing primarily with minority employment.

of this station in Warren Township and Champion Township.[2] It appears that Warren and Champion Townships are within WAKR-TV's zone; therefore, we will permit Mahoning to carry WAKR-TV on its proposed cable television systems at Warren and Champion Townships.

3. Mahoning has filed for special relief because it contends that Ohio Townships cannot issue cable television franchises. In support of its contention, Mahoning furnishes a letter it received from Mr. J. Walter Dragelevich, Prosecuting Attorney of Trumbull County, Ohio, who acts as legal advisor to the above-captioned townships. Mr. Dragelevich's letter states in pertinent part, as follows:

> (I)t is our considered legal judgment that any company seeking to furnish cable television facilities to the townships within Trumbull County are (sic) free to do so without securing prior approval of the Township Trustees.

Accordingly, Mahoning requests special relief pursuant to Section 76.7 of the Commission's Rules to qualify under Par. 116, *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326, 366 (1972), which provides for case by case consideration where it is claimed that there is no franchise or other appropriate authorization available for the cable operator to submit in an application for certificate of compliance. In such cases, the applicant is expected to make an acceptable alternative proposal for assuring that the substance of our rules, and specifically Section 76.31, is complied with.

4. In support of its request for special relief, Mahoning supplies a copy of the existing franchise for the City of Niles, Ohio, which contains provisions which meet most of the requirements of Section 76.31 of the Rules, and pledges that it will comply with all of the requirements of the Niles franchise and all appropriate Commission regulations. Specifically, in areas where the Niles franchise is not fully consistent with Section 76.31 of the Rules, Mahoning agrees to operate as follows: significant construction will be accomplished within one year after receiving Commission certification and a substantial percentage of the area will be energized each subsequent year until completion of the system in compliance with Rule 76.31(a)(2); initial subscribers rates will be in accordance with those set by the City of Niles, and any change in the Niles rates would have to be approved by the Niles City Council: and, pursuant to the Niles franchise, Mahoning will maintain an office in each of the townships to handle service complaints and will abide by all present and future regulations of this Commission. Although there is a 3% franchise fee for Niles, no such fee will be paid to any of the Townships involved.

5. It is appropriate to note that this is obviously a difficult area, and one which will require further consideration in our overall proceedings. We believe that we should not "freeze" cable development in localities where a supervising governmental entity is not now present, but rather should examine the applicant and its representations to determine whether on balance permission to proceed would serve the public interest. We have done so here, and find that a grant of these applications is appropriate. These grants are made subject to

[2] On February 6, 1973, Mahoning amended the Warren and Champion Township applications to specify carriage of WAKR-TV.

compliance with any further conditions imposed by the Commission during the period until March 31, 1977, which may result (i) from our overall proceedings to deal with this possible regulatory lacuna, or (ii) from further orders specifically directed to this case in event of facts being brought to our attention warranting action to protect the public interest. In any event, in 1977 we shall have the opportunity to review the matter, and may require special showings in these situations, if there has been no local regulatory change. Compare *Sun Valley Cable Communications*, FCC 73-27, — FCC 2d —.

In view of the foregoing, the Commission finds that a partial waiver of Section 76.31 of the Rules and grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the applications (CAC-824, 826-828, 833-834) filed by Mahoning Valley Cablevision, Inc., ARE GRANTED, and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

CONCURRING STATEMENT OF COMMISSIONER H. REX LEE

The certificate of compliance applications, filed by Armstrong Utilities, Inc. and Mahoning Valley Cablevision, Inc. for proposed cable television systems in various Ohio townships, raise the same issue as to the Commission's approach in those instances where there is no franchise or other appropriate authorization (see Rule 76.31) available for submission by a cable operator in a certificate of compliance application. In paragraph 116 of our *Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, 366 (1972), we indicated that the Commission would deal with such a situation on an *ad hoc* basis and that a cable operator would be required to include an acceptable alternative proposal in his certificate application, which would insure that the substance of our rules (and specifically, the franchise standards of Rule 76.31) is complied with. In paragraph 117 of the *Reconsideration Order*, we also stressed that proposed cable operations would not be delayed indefinitely until local jurisdictional disputes are settled.

Here, in the instant cases, both cable operators contend that Ohio townships have no authority to issue cable television franchises, and they support this claim with statements of local Ohio officials. They, therefore, request that their alternative proposals be accepted by the Commission pursuant to paragraph 116 of the *Reconsideration Order*. The Commission concludes that grant of the certificate applications is warranted under the circumstances so that cable development is not hindered in localities where a supervising governmental entity is not now present or the extent of its authority is in question.

While I have no quarrel with the adequacy of the cable operators' proposals in terms of our franchise standards and have concurred in grant of the certificate applications, I am concerned about the apparent absence of governmental franchising authority in Ohio communities other than municipalities. Our regulatory approach in the

Cable Television Report and Order, 36 FCC 2d 143 (1972), was deliberately based on a "structured dualism" whereby both federal and local authorities share responsibility for the effective implementation of cable television service. Local franchising was made an integral part of our program so that specific standards concerning such matters as rate charges and service complaints could be implemented by local authorities. In those states where no local authority exercises jurisdiction over cable television operations, however, we must rely entirely on cable operators to achieve compliance with our prescribed standards.

I would hope that, before March 31, 1977, the State of Ohio and other similar jurisdictions will seriously consider the need to clarify the status of cable regulation so that the Commission's regulatory approach can be fulfilled. While I agree that cable development should not be unnecessarily delayed in localities where no governmental authority exercises jurisdiction or where there is a jurisdictional dispute, I intend to remain alert to any problems that could adversely affect the subscribing public.

F.C.C. 73–204

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
ORANGE CABLEVISION, INC., ORLANDO, FLA.	CAC–103, FL181
ORANGE CABLEVISION, INC., WINTER PARK, FLA.	CAC–104, FL189
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted February 21, 1973; Released February 28, 1973)

BY THE COMMISSION:

1. On March 31, 1972, Orange Cablevision, Inc., filed certificate of compliance applications (CAC–103 and 104) for the addition of television signals to its existing cable television systems at Orlando and Winter Park, Florida, located within the Orlando-Daytona Beach, Florida market (55th largest). On May 16, 1972, the licensee of Station WMFE–TV, Orlando, Florida, filed a "Petition of Florida Central East Coast Educational Television, Inc." opposing the applications.

2. Prior to March 31, 1972, and in compliance with our rules, the Orange systems were providing the following television signals to their subscribers:

WESH–TV (NBC Channel 2), Daytona Beach, Florida.
WDBO–TV (CBS Channel 6), Orlando, Florida.
WFTV (ABC Channel 9), Orlando, Florida
WMFE–TV (Educ. Channel 24), Orlando, Florida.
WEDU (Educ. Channel 3), Tampa, Florida.
WUSF–TV (Educ. Channel 16), Tampa, Florida.

On July 29, 1970 and December 2, 1971, respectively, the Orlando and Winter Park systems were authorized to carry Stations WUSF–TV, WEDU, and WUFT (Educ.), Gainesville, Florida, by grant of their petitions for waiver of former Section 74.1107 of the Rules by the Chief, Cable Television Bureau, pursuant to delegated authority (CATV 100–500 and 100–620); however, neither system has ever carried WUFT. The subject applications, as amended, request authorization to add the following signals:

WUFT (Educ. Channel 5), Gainesville, Florida.
WCIX–TV (Ind. Channel 6), Miami, Florida
WLTV (Spanish language, Channel 23), Miami, Florida.
WTOG (Ind. Channel 44), St. Petersburg, Florida.
WSWB–TV (C.P. Channel 35), Orlando, Florida.

Carriage of these signals is consistent with the provisions of Section 76.61 (b) and (d) of the Rules.

3. In its petition, Florida Central objects to the continued carriage of WEDU, and urges that the grandfathered status of WUFT, conferred by the prior authorizations, be revoked. In support of its request, Florida Central argues that: (a) importation of distant educational signals will adversely affect its economic viability; (b) earlier station personnel did not object to carriage of WUFT in 1970 and 1971 because they did not recognize the potential impact of cable carriage of distant signals; and (c) the systems are within WMFE–TV's "sphere of influence". With respect to (c), on May 1, 1972, the Managers of Educational Stations WEDU, WUFT, and WMFE–TV signed a joint agreement recognizing WMFE–TV's sphere of influence and stating that "we wish to express our desire that the other noncommercial signals being imported by CATV systems in the WMFE–TV sphere of influence be removed."

4. Florida Central previously presented the same arguments in opposition to the certification of new cable systems in the Orlando-Daytona Beach market. See *e.g.*, *Orange Cablevision, Inc.*, FCC 73–76 —— FCC 2d ——; FCC 73–79, —— FCC 2d ——. We again reject these arguments for the reasons given in the cited cases. Since carriage of WUFT is grandfathered, Florida Central has a "substantial burden" in seeking to prevent its certification. See *Fort Smith TV Cable Company*, FCC 73–151, —— FCC 2d ——; para. 112, *Cable Television Report and Order*, 36 FCC 2d 143. This is even more so, where, as in the case of WEDU, the signal has already been carried for a period of time. Since Florida Central has failed to provide the required "clear showing," *Ibid.*, and has not otherwise met its burden, its objections to carriage of WUFT and WEDU must be denied.

In view of the foregoing we find that grant of the above-captioned applications would be consistent with the public interest.

According, IT IS ORDERED, That the "Petition of Florida East Coast Educational Television, Inc." filed May 16, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned applications (CAC–103; CAC–104) ARE GRANTED, and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-240

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUESTS BY ABC AND NBC FOR WAIVERS OF THE PRIME TIME ACCESS RULE IN CONNECTION WITH SPORTS EVENTS IN MARCH AND APRIL 1973

MEMORANDUM OPINION AND ORDER

(Adopted March 2, 1973; Released March 7, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND JOHNSON DISSENTING; COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. The Commission here considers certain requests for waiver of the "prime time access rule" (Section 73.658(k) of the Commission's Rules) in petitions filed by American Broadcasting Companies, Inc. (ABC) and National Broadcasting Company, Inc. (NBC) on November 17 and October 31, 1972, respectively, all dealing with sports events. A December 13, 1972 decision (FCC 72-1131 released December 19, 1972, 26 R.R. 2d 11) dealt with requests through February 28, 1973. This present action does not deal with one remaining request in the NBC petition, concerning waiver for its "Miss America" broadcast in September 1973; this will be considered, and appropriate action taken, in the near future (NBC has requested as early a decision as possible in that matter).

2. The events involved here are all sports events involving possible "runovers", i.e., where the game is scheduled for a certain amount of time but may unexpectedly run longer, and in that event would either run from the late afternoon over into prime time (i.e., after 7 p.m. E.T.), or, if scheduled in the evening, consume more than the allotted amount of prime time. In "footnote 35" of the May 1970 Report and Order adopting the prime time access rule (23 FCC 2d 382, 395) it was stated that waivers would be granted in cases where the event and telecast would normally conclude within the period allowed, but might occasionally run longer because of weather delays, overtime, etc. beyond the control of the network. The events dealt with here include one for ABC, an NBA pro basketball game scheduled for 4:45 to 7 p.m. E.T. on Sunday, March 25, and several for NBC. NBC's events include NCAA afternoon basketball double-headers during the NCAA playoff period, March 10, 17 and 24, 1973 (apparently scheduled from 2 to 6 p.m. E.T. or local time), regular season and some Stanley Cup hockey games in the afternoon during March and April (the regular season games are all on Sundays and apparently none is scheduled to start after 3 p.m. E.T.); the NCAA final game scheduled

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for 9:00 p.m. E.T. on Monday, March 26, 9–11 p.m. E.T.; and two Stanley Cup hockey games scheduled at night in April. NBC's petition of October 31, 1972, asked for a blanket waiver for these hockey and basketball games, on the assumption that the telecast will normally last no more than the scheduled time of 2 hours for basketball and 2½ hours for hockey.

3. Certain developments appear to indicate that, event in the normal course of events, there is a substantial chance that NBC's telecasts might run longer than the two hours scheduled for basketball and two and a half hours for hockey (these included a 1972 NCAA basketball telecast for which waiver was granted, and which ran some 12½ minutes over two hours and into prime time, and a January 1973 hockey telecast which ran about 10 minutes over the 2½ hour allotment). In a letter of February 13, 1972, counsel for NBC states that its scheduling arrangements mentioned in the previous paragraphs have been modified somewhat with respect to the proposed afternoon games, so that no coverage is contemplated of NCAA afternoon basketball games starting later than 4:45 p.m. E.T. or P.T. (3:45 p.m. C.T. and M.T.) and no coverage of afternoon hockey games (regular season or Stanley Cup) starting after 4:15 E.T. (3:15 C.T.). Thus, it appears that, in effect, the scheduling allotments for these games have been increased to 2 hours 15 minutes for basketball and 2 hours 45 minutes for hockey.

DISCUSSIONS AND CONCLUSIONS

4. Upon consideration of the foregoing matters (including NBC's revision) we are of the view that waiver is warranted as requested, in case it should be necessary because of the unusual length of the games. As far as the various afternoon basketball and hockey games are concerned, and the amount of time allotted for these—two hours 15 minutes for basketball, and two hours 45 minutes for hockey—it appears that this should be sufficient to allow completion of the games before the beginning of prime time, in the absence of overtime or other really unusual circumstances. Therefore the telecasts fall within the principle of "footnote 35" in the May 1970 decision adopting the rule (mentioned above), and a number of later Commission decisions applying it, in which waiver was granted where it appeared that the game should in normal course be over by the beginning of prime time, but overtime or other really unusual developments might make it run over. This general principle appears to apply here, with two hours 15 minutes allotted for the basketball games and two hours 45 minutes for hockey.

5. As to NBC's contemplated evening telecasts—two Stanley Cup hockey games and one basketball game—it appears not quite as likely that these will be over in the allotted time, which is still two hours for basketball and two hours 30 minutes for hockey. However, it is also to be borne in mind that in these cases the "overrun", if it occurs at all, falls outside of prime time in most of the country, after 11 p.m. E.T. or 10 p.m. C.T. It is only in the Mountain and Pacific time zones, which have fewer than 20% of the top 50 markets of the nation

or the TV homes in them, where there are possible problems in relation to the prime time access rule. In these circumstances, the Commission has in the past been fairly liberal, recognizing the problems which arise from the time-zone difference, particularly where live, simultaneous programming such as sports events is involved. See, for example, *Academy Awards* and *Miss America*, 33 FCC 2d 743 (February 1972); *Democratic National Telethon Committee*, 35 FCC 2d 770 (June 1972). Accordingly, and also since there is at least a fair chance that the telecasts will be completed within the periods allocated for them, waiver in these cases, in case it should be necessary, appears also to be appropriate.

6. In view of the foregoing, IT IS ORDERED That:

(1) Stations affiliated or under common ownership with the American Broadcasting Companies, Inc. (ABC) or National Broadcasting Company, Inc. (NBC) television network MAY CARRY TO CONCLUSION (but not including any post-game material), without counting toward the permissible three hours of network prime time programming on the evening involved, NBA or NCAA basketball telecasts beginning no later than 4:45 p.m. E.T. (3:45 p.m. C.T.), and NHL regular season and Stanley Cup playoff games beginning no later than 4:15 p.m. E.T. (3:15 p.m. C.T.) on dates in March and April 1973; and

(2) Stations affiliated with or under common ownership with the NBC television network in the Mountain and Pacific time zones MAY CARRY TO COMPLETION NCAA basketball championship games or NHL Stanley Cup Championship games beginning at or after 8 p.m. E.T., on dates in March and April 1973, without any of the time beyond two hours for basketball games and 2½ hours for hockey games counting toward the permissible three hours of network programming on the evening involved.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–174

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
QUINNIPIAC VALLEY SERVICE, INC., WALLINGFORD, CONN.	Docket No. 19686 File No. BP–14832
Requests: 860 kHz, 500 W, DA, Day	
RADIO RIDGEFIELD, INC., RIDGEFIELD, CONN.	Docket No. 19687 File No. BP–18494
Requests: 850 kHz, 1 kW, DA, Day	
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 23, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has before it for consideration (i) the above-captioned applications which are mutually exclusive in that operation by both applicants would entail contour overlap prohibited by section 73.37 of the Commission's rules; (ii) a Quinnipiac Valley Service, Inc. (Quinnipiac), petition for reconsideration of its dismissal by the Commission filed February 12, 1971; (iii) an opposition filed by Meriden-Wallingford Radio, Inc. (Meriden-Wallingford), then-licensee of WMMW, Meriden, Connecticut;[1] (iv) the applicant's reply; (v) a supplement to the petition filed December 14, 1972; (vi) a petition to deny filed against Quinnipiac by WSBS—The Berkshires, Inc., licensee of WSBS, Great Barrington, Massachusetts, on March 4, 1964; (vii) a petition to deny filed by Columbia Broadcasting System, Inc. (CBS), a licensee of WCBS, New York, New York, on March 16, 1964; (viii) a petition to deny by Meriden-Wallingford filed February 27, 1969; and (ix) pleadings in response filed by Quinnipiac and replies submitted by CBS and Meriden-Wallingford. Also before us are requests for waivers of various rules by both applicants.

2. In an Order adopted January 13, 1971, the Commission denied Quinnipiac Valley Service, Inc., a waiver of the multiple-ownership rule (section 73.35) and dismissed its application for non-compliance with the duopoly portion of the rule. 27 FCC 2d 66, 20 RR 2d 1081.[1a] John T. Parsons, president and 50 percent owner of the applicant, was also president and 45 percent owner of station WOWW, Naugatuck,

[1] Subsequent to the filing of the petition, the license for WMMW was assigned to WMMW, Inc. The new licensee recently informed the Commission that it wished to adopt Meriden-Wallingford's pleadings. The ordering clause in paragraph 26, *infra* (designating parties to the proceeding ordered herein), makes provision for the assignment.

[1a] Prior Commission actions affecting the Quinnipiac application include Orders released July 9, 1964 (FCC 64–631) (holding a drop-out agreement with Radio Wallingford, Inc., a former competing applicant, in abeyance); and October 16, 1964 (FCC 64–937) (giving formal approval to the drop-out agreement).

Connecticut, about 12 miles away. Grant of the application would have resulted in overlap of the respective 1 mV/m contours. Quinnipiac filed a petition for reconsideration, eliciting opposition from Meriden-Wallingford. When Parsons recently severed his connection with WOWW (effective October 1, 1972), he cured the cause for dismissal and mooted the pleadings directed toward the above issue. Accordingly, the petition for reconsideration will be dismissed and the application reinstated on our own motion.

3. Reinstatement of Quinnipiac's proposal, however, necessarily revives previous objections directed against the application which had been mooted by the Commission's aforementioned dismissal. Allegations included charges of objectionable interference and prohibited overlap filed by the Columbia Broadcasting System, licensee of WCBS, New York, New York, ascertainment, financial and interference allegations made by Meriden-Wallingford, and an interference claim by WSBS—The Berkshires, Inc., licensee of WSBS, Great Barrington, Massachusetts.

4. The competing application filed by Radio Ridgefield proposes a standard broadcast facility in Ridgefield, Connecticut. Radio Ridgefield tendered its application for filing on February 27, 1969, the cut-off date assigned the Quinnipiac application. However, the Ridgefield application also directly conflicted with an application filed by Wayne County Broadcasting Corp. for Honesdale, Pennsylvania, which had a cut-off date of June 19, 1968.[2] This, Radio Ridgefield was considered to have filed too late, and its application was not accepted. The applicant petitioned for acceptance arguing that the mutual exclusivity between the Wayne County proposal and one of the connecting applications (that of Peter L. Pratt for Honesdale) did not exist, and hence, it was not tied to the 1968 cut-off date. At the same time, it petitioned alternatively for a waiver of the cut-off rules based on charges that it has been unfairly tied to the earlier cut-off date by the filing of applications in abuse of the Commission's processes. Since it appears that the filing of the Pratt and General Broadcasting proposals did involve abuse of our processes (*Wayne County Broadcasting Corp.*, 26 FCC 2d 52 (1970)), we believe that under the unique circumstances presented, a waiver of the cut-off rules is warranted.[3]

5. The Quinnipiac and Ridgefield proposals involve prohibited overlap of contours with a frequency separation of 10 kHz.[4] Since they are, then, mutually exclusive, they will be designated for hearing in a consolidated proceeding on the issues specified below. Although section 1.580(b) of the Commission's rules provides that no application will be acted upon less than 30 days following issuance of public notice of the acceptance of the application, the Commission will, on its own motion,

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[2] Radio Ridgefield's proposal conflicted with an application by the General Broadcasting Corporation for Yorktown Heights, New York (BP-18219), which was mutually exclusive with an application by Peter L. Pratt for Honesdale, Pennsylvania (BP-18233), which was, in turn, mutually exclusive with the Wayne County Broadcasting Corporation application for Honesdale (BP-18018).

[3] Moreover, we note that the chain connecting Radio Ridgefield to Wayne County's application was broken by dismissal of the General Broadcasting Corporation application on October 7, 1970.

[4] Section 73.37(a) of the Commission's rules.

waive section 1.580(b) with respect to Radio Ridgefield so that the applications herein may proceed to hearing without further delay.

6. CBS alleges that the Quinnipiac operation would cause objectionable interference within the WCBS 0.5 mV/m contour in contravention of section 73.182(w) of the rules, and that there would be prohibited overlap of the 2 mV/m and 25 mV/m contours of stations 20 kHz removed in violation of section 73.37. Section 73.182(w) was amended July 1, 1964 (Docket No. 15084, 2 RR 2d 1658), to eliminate the provision concerning interference based on a 1:30 ratio, and hence, poses no bar to the applicant. But, according to Quinnipiac's own studies, the proposed operation would involve 2 mV/m and 25 mV/m overlap with WCBS. The applicant contends the overlap should not be considered objectionable because (i) it is due to a long salt-water path, and (ii) its application was filed prior to adoption of the prohibited overlap provisions of section 73.37. With regard to the first contention, we note that our rules do not sanction such overlap merely because it may be due to a high conductivity path. And concerning the latter, at the date of filing (May 3, 1961), section 3.37[5] was in effect and clearly prohibited overlap of the 25 mV/m and 2 mV/m groundwave contours for stations operating on frequencies 20 kHz removed. Moreover, in this instance, the question of whether a waiver should be granted is more fit for resolution in an evidentiary hearing, and not by summary decision based on pleadings alone.[6]

7. The Commission also finds that the 2 mV/m contour of WRYM, New Britain, Connecticut (another station 20 kHz removed), would be separated from Quinnipiac's proposed 25 mV/m contour by only about 0.6 mile based on Figure M–3 conductivities. Since no measurement data are available to establish the extent of the WRYM 2 mV/m contour and since Figure M–3 is not intended to accurately depict conductivity over such short paths (approximately 15 miles), we conclude that a substantial question exists as to whether prohibited overlap of the 2 mV/m and 25 mV/m contours would result with WRYM. Appropriate issues will be specified with respect to the overlap with WCBS, and the possible overlap with WRYM. Columbia Broadcasting System, Inc., and Hartford County Broadcasting Corp., licensees of the respective stations, will be made parties to the proceeding.

8. WSBS—The Berkshires, Inc., licensee of WSBS, Great Barrington, Massachusetts, filed a petition to deny alleging the proposed operation would cause interference to WSBS. Quinnipiac subsequently amended its application (October 20, 1969) and the Commission now finds that objectionable interference would not be caused WSBS. Accordingly, the WSBS petition to deny will be dismissed.

9. Meriden-Wallingford claimed standing as a party in interest based on the allegation that Quinnipiac's operation would be within

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[5] § 3.37 Minimum Separation Between Stations: A license will not be granted for a station on a frequency of ±30 kc from that of another station if the area enclosed by the 25 mv/m groundwave contours of the two stations overlap, nor will a license be granted for the operation of a station on a frequency ±20 kc or ±10 kc from the frequency of another station if the area enclosed by the 25 mv/m groundwave contour of either one overlaps the area enclosed by the 2 mv/m groundwave contour of the other.

[6] Since the application was filed prior to adoption of section 73.37 (the "go-no go" rules) (July 1, 1964) it can be accepted for filing. *Compare* section 3.37, *with* section 73.37(a).

its service area and compete with it for advertising revenue. The Commission finds that Meriden-Wallingford had the requisite standing as a party in interest within the purview of section 309(d)(1) of the Communications Act of 1934, as amended, and section 1.580(i) of the Commission's rules. *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 9 RR 2008 (1940).

10. Meriden-Wallingford charged in its initial pleading that 11.3 percent of the population within Quinnipiac's normally protected contour would receive interference from WSBS, WRYM, and WIEL, Philadelphia, Pennsylvania. While this exceeded the "10% Rule" allowed for applications filed before July 13, 1964, Quinnipiac's engineering amendment of October 20, 1969, reduced proposed power to 500 watts, and the segment of the population that would receive interference to 3.74 percent. There appears, then, to be no violation of section 73.28(d)(3).[7]

11. Meriden-Wallingford also faults the application for lack of a community survey and for an inadequate financial showing. Although the applicant has since supplied an ascertainment of community needs, its survey is defective. Quinnipiac indicates that 19 persons of below-average income were contacted either in person or by telephone, and that the remaining 32 people interviewed were all in the community leader category. Yet, there is no showing that any of these leaders was representative of the below-average income group. (See questions 13(a) and 16 of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 36 F.R. 4092, 4105 (March 3, 1971)). Furthermore, Quinnipiac's public service proposals are too indefinite for us to conclude that they will be responsive to Wallingford's problems. For example, drug abuse is cited as a problem, but the applicant makes no programming response; a daily student show is mentioned, but no specifics offered; tape-recorded playback of town council meetings is proposed, but no time slot or duration suggested; and, if Quinnipiac fails to locate the announcer-host for its telephone talk show (as it suggests might happen), then this applicant will utterly lack any regularly scheduled programming for the discussion of community problems. *See* question 29 of the *Primer*, *supra*. Thus, substantial questions exist as to the adequacy of the applicant's ascertainment of its community's needs and its response to those needs. Therefore, a *Suburban*[8] issue will be specified.

12. The applicant has updated its financial data several times since the initial filing, but it appears inadequate. First, its most recent financial data is now two years old. Second, even using the applicant's 1970 figures, costs of construction and operating expenses for the first year exceed available assets. According to its estimates, costs total $125,000, broken down as follows: down payment on equipment, $11,920; first-year's payments on equipment with interest, $11,580; building, $3,000; land, $1,000; miscellaneous, $7,500; and one-year's working capital, $90,000. Assets included existing capital, $1,000; new capital, $9,000;

[7] Meriden-Wallingford also contends that the Quinnipiac proposal involves prohibited overlap with WCBS and WRYM. As explained in paragraphs 6 and 7, *supra*, issues are being specified in this regard.

[8] *Suburban Broadcasters*, 20 RR 951 (1961).

stockholder loan obligations, $31,000; and a bank loan commitment of $30,000, for a total of $71,000. The stockholder loan agreement fails to specify the terms upon which the principals will loan the $31,000 to the applicant corporation and, apart from the current obsolescence of both principals' financial statements, that of John T. Parsons was inadequate when submitted. Thus, anticipated expenditures exceeded available assets by at least $54,000. Issues will be specified in order to permit a determination of the current financial status of Quinnipiac's principals and whether sufficient funds are available to meet the cost of construction and one year's operation.

13. Finally, Meriden-Wallingford claims that the "drop-out" agreement between Quinnipiac and Radio Wallingford, Inc. (a former competing applicant for a Wallingford license) (hereafter Radio Wallingford), is contrary to the public interest. The petition to deny is, in this respect, a petition for reconsideration of our previous Order approving the agreement,[9] and is in obvious non-compliance with section 405 of the Communications Act of 1934, as amended, and section 1.106(f) of our rules. Its petition was filed over four years after approval by the Commission, whereas the Act requires such filings within 30 days. But, inasmuch as the pleading was timely filed as a petition to deny,[10] we will address ourselves to petitioner's contentions.

14. In return for Radio Wallingford's agreement to suffer dismissal, Quinnipiac has extended the former applicant the option of reimbursement in cash of $3,500, or assignment of 50 percent of Quinnipiac's stock, contingent upon a grant of the latter's application. Meriden-Wallingford asserts that by the terms of the option, Quinnipiac is "committed" to transferring 50 percent of its stock to a company which, several years after the agreement's approval, may be unqualified, and that the agreement fails to extract any continuing financial support from Radio Wallingford in return for receipt of Quinnipiac stock.

15. The petitioner's concern is groundless. First of all, the Commission has already approved this agreement once. Second, even if circumstances have since changed, Quinnipiac is not "committed" to conveying its stock to a perhaps now-unqualified Radio Wallingford since our approval must also be secured prior to consummation to effect a lawful transfer of control. And that sanction is based on a reappraisal of the prospective part-owner's qualifications, as well as the terms of the agreement. The petitioner's vague, unsupported conclusions fail to raise substantial and material questions of fact warranting designation of an issue.

16. Radio Ridgefield is in violation of section 1.569(b)(2)(i) of the rules in that the proposed transmitter site lies beyond a 500-mile extension of the 0.5 mV/m-50% nighttime skywave contour of class I-A station WBAP, Fort Worth, Texas, on 820 kHz (a "frozen" channel 30 kHz removed from the proposed frequency). The appli-

[9] Tentative approval was given July 8, 1964 (FCC 64-631, 3 RR 2d 1005) and, after compliance with the publication requirements of section 1.525(b) of the rules, final approval on October 14, 1964 (FCC 64-937).

[10] The petition to deny was filed on February 27, 1969, the cut-off date for Quinnipiac, in accordance with section 309(d)(1) of the Act.

cant requests a waiver of this section and the Commission grants it since this is in keeping with past policy holding that proposals 30 kHz removed from class I–A channels do not materially prejudice future consideration of those channels. *See*, e.g., *Peter L. Pratt*, 16 FCC 2d 967, 15 RR 2d 933 (1969).

17. Radio Ridgefield will be given the opportunity to correct deficiencies in its financial showing at hearing. First, the applicant's cost figures are now nearly three years old and must be updated. Second, the applicant relies almost exclusively on a $100,000 loan from its president, Bartholomew T. Salerno, to demonstrate its financial qualifications. But Mr. Salerno's financial statement fails to establish that the real estate values cited were based on appraisal by an independent real estate agent. Also, the letter evidencing willingness to make the loan fails to state whether any security is required, as prescribed by paragraph 4(a), section III, FCC Form 301.[11] The appropriate issues are designated.

18. Radio Ridgefield has been faulted for failure to provide a 5 mV/m signal over the entire political subdivision known as Ridgefield Township (see section 73.188(b)(2)). On February 9, 1971, Radio Ridgefield amended its application and now proposes to serve primarily the unincorporated population center of the township.[12] This amendment shows that the proposed 25 mV/m contour encompasses all of the business area, and the 5 mV/m contour more than covers all of the population center of Ridgefield, both in conformity with section 73.188(b) of the rules. Accordingly, the applicant's proposal will be construed as specifying Ridgefield center as the community of license.[13]

19. However, the Ridgefield proposal also clearly projects the 5 mV/m contour as penetrating the Danbury corporate limits, to which the 1970 census assigns a population of 50,781,[14] a figure more than twice the population of Ridgefield center.[15] These facts raise a presumption that Radio Ridgefield's operation is intended to serve the community of Danbury, rather than the community of Ridgefield center.[16] An appropriate section 307(b) suburban community issue will be designated to give the applicant an opportunity to rebut this presumption.

20. From the information before the Commission it appears that, except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, for the

[11] Mr. Salerno is not the sole stockholder of the applicant corporation. Mr. Paul A. Christo, vice-president of the applicant, owns 10 percent of the stock.

[12] Section 73.30(a) sanctions the grant of licenses to stations assigned to unincorporated communities. *North Atlanta Broadcasting Co.*, 1 RR 2d 275 (Review Board 1963).

[13] Were this applicant to designate the whole of Ridgefield Township as the community of license, serious section 73.37(b) problems would be raised since prohibited overlap would exist with co-channel stations WHDH, Boston, Massachusetts, and WEEU, Reading, Pennsylvania, and since the 1970 U.S. census shows a northern portion of the township as embraced in the Danbury urbanized area with the township population remaining below 25,000.

[14] Danbury city has been treated as co-extensive with the town of Danbury since 1960, for Bureau of Census purposes, and the same population reported for both.

[15] The Bureau of the Census reports the 1970 population of Ridgefield center as 5,878 and that of Ridgefield Township as 18,188.

[16] *Policy Statement on Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 FCC 2d 190, 6 RR 2d 1901 (1965).

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reasons indicated above, they must be designated for hearing in a consolidated proceeding on the issues set forth below.

21. Accordingly, IT IS ORDERED, That the application of Quinnipiac Valley Service, Inc., IS REINSTATED on our own motion; that the application of Radio Ridgefield, Inc., IS HEREBY ACCEPTED FOR FILING; that, on the Commission's own motion, section 1.580(b) of the Commission's rules IS WAIVED; and that, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the proposed operations and the availability of other primary aural (1 mV/m or greater in the case of FM) service to such areas and populations.

2. To determine whether overlap of the 2 and 25 mV/m contours would occur between the Quinnipiac proposal and WCBS, New York, New York, in contravention of section 73.37 of the Commission's rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

3. To determine whether overlap of the 2 and 25 mV/m contours would occur between the Quinnipiac proposal and WRYM, New Britain, Connecticut, in contravention of section 73.37 of the Commission's rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

4. To determine the efforts made by Quinnipiac Valley Service, Inc., to ascertain the community problems of the area to be served and the means by which the applicant proposes to meet those problems.

5. To determine, with respect to the application of Quinnipiac Valley Service, Inc.:

(a) Whether John T. Parsons and James W. Miller have sufficient net liquid and current assets to meet their respective loan commitments;

(b) Whether sufficient additional funds are available to meet construction costs and operating expenses for the first year;

(c) The current basis for the applicant's estimated construction costs and operating expenses for the first year; and

(d) In light of the evidence adduced pursuant to (a), (b), and (c), above, whether the applicant is financially qualified.

6. To determine whether the proposal of Radio Ridgefield, Inc., will realistically provide a local transmission facility for its specified station location, or for another larger community, in light of all the relevant evidence, including, but not necessarily limited to the showing with respect to:

(a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programming needs;

(b) The extent to which the needs of the specified station location are being met by existing aural broadcast stations;

(c) The extent to which the applicant's program proposal will meet the specific unsatisfied programming needs of its specified station location; and

(d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

7. To determine, in the event that it is concluded pursuant to the foregoing issue that the proposal will not realistically provide a local transmission service for its specified station location, whether such proposal meets all of the technical provisions of the rules for standard broadcast stations assigned to the most populous community for which it is determined that the proposal will realistically provide a local transmission service; namely, Danbury, Connecticut.

8. To determine, with respect to the application of Radio Ridgefield, Inc.:

(a) Whether Bartholomew T. Salerno has sufficient net current and liquid assets to loan $100,000 to the applicant, and what, if any, security will be required;

(b) The current basis of the applicant's estimated construction costs and operating expenses for the first year; and

(c) In light of the evidence adduced pursuant to (a) and (b), above, whether the applicant is financially qualified.

9. To determine, in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

10. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

22. IT IS FURTHER ORDERED, That, the Memorandum Opinion and Order of January 13, 1971, 27 FCC 2d 66, dismissing the application of Quinnipiac Valley Service, Inc., IS SET ASIDE and that the petition for reconsideration, and supplement, filed by Quinnipiac Valley Service, Inc., ARE DISMISSED as moot.

23. IT IS FURTHER ORDERED, That, the request of Radio Ridgefield, Inc., for waiver of section 1.569(b)(2)(i) of the rules IS GRANTED; that, the request for waiver of sections 1.571(c) and 1.227(b)(1), (4) IS GRANTED.

24. IT IS FURTHER ORDERED, That the petition to deny the application of Quinnipiac Valley Service, Inc., filed by WSBS—The Berkshires, Inc., IS HEREBY DISMISSED.

25. IT IS FURTHER ORDERED, That the petitions of the Columbia Broadcasting System, Inc., and of Meriden-Wallingford Radio, Inc., directed against the application of Quinnipiac Valley Service, Inc., ARE GRANTED to the extent indicated above and ARE DENIED in all other respects.

26. IT IS FURTHER ORDERED, That the Columbia Broadcasting System, Inc., Hartford County Broadcasting Corp., and WMMW, Inc., ARE MADE PARTIES to the proceeding.

27. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to section 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

28. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by section 1.594(g) of the rules.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-232

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 1 OF THE COMMISSION'S RULES TO REQUIRE SIMULTANEOUS PAYMENT OF THE FILING AND GRANT FEE WITH AN APPLICATION FOR CERTIFICATION OR TYPE ACCEPTANCE	Docket No. 19642

REPORT AND ORDER

(Adopted March 2, 1973; Released March 7, 1973)

BY THE COMMISSION:

1. On November 22, 1972, the Commission adopted a Notice of Proposed Rule Making in the subject proceeding. The date for receiving comments closed on January 8, 1973, and for reply comments on January 18, 1973.

2. This Notice proposed that, to simplify administration, the applicant for certification or type acceptance pay the required filing fee and grant fee simultaneously. The Notice further proposed that such payment be made at the time the application for certification or for type acceptance is filed and that no action be taken on the application until such combined payment is made.

3. Comments were received from one manufacturer of aeronautical radio equipment—Narco Avionics, who agreed with the Commission that simultaneous payment of filing and grant fees would be desirable and would simplify bookkeeping and administrative problems. However, Narco proposes that the procedure be further simplified by requiring the simultaneous payment after certification or type acceptance has been granted on the grounds that this would avoid the need for making a refund if no grant were issued.

4. The Commission cannot accept Narco's proposal. As pointed out in paragraph 4 of the Notice, our experience has been that better than 95% of the applications are granted. Moreover, we have found that in a significant number of cases, the applicant did not pay the grant fee within the period allowed and it was necessary to dun the applicant for such payment. In the opinion of the Commission, the need to make a refund is outweighed by the problem of late payment, and we must insist on prepayment of the combined filing and grant fee as the more desirable administrative approach.

5. Accordingly, the regulation requiring prepayment of the combined fee is adopted herein. To provide a reasonable transition period,

simultaneous payment will not be required prior to July 1, 1973. However, no application will be accepted for processing after that date unless the combined payment is submitted with the application.

6. Authority for the adoption of the amendments herein proposed is contained in Section 4(i) of the Communications Act (47 U.S.C. 154(i)), Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483(a)), and Budget Bureau Circular A–25 and supplements thereto.

7. IT IS ORDERED that, effective April 16, 1973, Part 1 of our rules is amended as set out in the Appendix, and that this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 1 of Chapter I, Title 47, of the Code of Federal Regulations is amended as follows:

1. Section 1.1102 is amended by adding a note immediately after paragraph (b), revising paragraphs (d) and (g) and adding a new (j) to read as follows:

§ 1.1102 *Payment of Fees.*

* * * * * * * *

(b) * * *

NOTE: Combined fees. See paragraph (j) of this section concerning simultaneous payment of filing and grant fees with applications for type acceptance or certification of equipment.

* * * * * * * *

(d) Where a separate grant fee payment is prescribed in the various services, the fee will be payable within 45 days after grant by the Commission. In the broadcast services, the grant fee, based on a percentage of the consideration in assignment and transfer cases must be transmitted by the new licensee immediately following consummation of the transfer or assignment. All grants, approvals and authorizations issued by the Commission are made subject to payment and receipt of the applicable fee within the required period. Failure to make payment of the applicable fee to the Commission by the required date shall result in the grant, authorization or approval becoming null and void and ineffective after that date.

* * * * * * * *

(g) Applications and attached fees should be addressed to Federal Communications Commission, Washington, D.C. 20554, or to the appropriate FCC Field Office and should not be marked for the attention of any individual bureau or office. Fee payments should be in the form of a check or money order payable to the Federal Communications Commission. The Commission will not be responsible for cash sent through the mails. All fees collected will be paid into the U.S. Treasury as miscellaneous receipts in accordance with the provisions of Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483(a)).

* * * * * * * *

(j) Combined filing and grant fees with applications for certification and type acceptance of equipment: Each application for certification or type acceptance of equipment shall be accompanied by a combined payment covering the filing and grant fees for such application. Payment of filing and grant fees separately is permissible until July 1, 1973; however, appli-

cants are encouraged to submit fees simultaneously prior to this date. On or after July 1, 1973, applications will not be processed prior to payment of the combined filing and grant fees.

2. Section 1.1108 is amended by adding a new paragraph (c) to read as follows:

§ 1.1108 *Return or refund of fees.*

* * * * * * *

(c) Grant fees received as part of a combined fee payment pursuant to §1.1102 (j) will be refunded in the following instances:

(1) When an application for certification or type acceptance is dismissed or denied by the Commission.

(2) When a request for withdrawal of the application is received prior to the date of grant of certification or type acceptance.

(3) When the failure of an applicant for certification or type acceptance to reply to a request for additional information results in a dismissal of the application.

§1.1120 [Amended]

3. In Section 1.1120, add footnote 10 to the table headings "Certification" and "Type Acceptance" and insert the following footnote at the bottom of the text:

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[10] After July 1, 1973, the filing fee and the grant fee must be paid simultaneously when an application for certification or for type acceptance is filed. See §§ 1.1102(j) and 1.1103(c).

F.C.C. 73-169

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 2 OF THE COMMISSION'S RULES TO CONFORM, TO THE EXTENT PRACTICABLE, WITH THE GENEVA RADIO REGULATIONS, AS REVISED BY THE SPACE WARC, GENEVA, 1971	Docket No. 19547

REPORT AND ORDER

(Adopted February 14, 1973; Released February 23, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. The Commission, on July 14, 1972, adopted a Notice of Proposed Rule Making in the above captioned proceeding, which was released on July 26, 1972, and published in the Federal Register on August 4, 1972 (37 FR 15714). A correction of the Federal Register was published on November 28, 1972 (37 FR 25175). The time for filing comments and reply comments was originally established as September 29, 1972, and October 10, 1972. Pursuant to the filing of Motions to Extend by the Central Committee on Communications Facilities of the American Petroleum Institute and the Utilities Telecommunications Council, the time for filing comments and reply comments was extended, by Order of the Commission's General Counsel released October 2, 1972, to October 30, 1972, and November 10, 1972, respectively. Pursuant to a filing by Communications Satellite Corporation, the time for filing reply comments was, by Order of the Commission's General Counsel released on November 10, 1972, extended to November 17, 1972.

2. Comments were filed by the Association of Maximum Service Telecasters (AMST); MCI-Lockheed Satellite Corporation (MCI); Department of Health, Education, and Welfare (HEW); American Telephone and Telegraph Company (AT&T); National Association of Manufacturers (NAM); Aeronautical Radio, Inc. and the Air Transport Association of America (Arinc/ATA); Corporation for Public Broadcasting (CPB); Joint Council on Educational Telecommunications (JCET); General Electric Company (GE); National Association of Broadcasters (NAB); Central Committee on Communication Facilities of the American Petroleum Institute (API); Communications Satellite Corporation (ComSat); Fairchild Industries (Fairchild); and Utilities Telecommunications Council (UTC). Reply comments were timely filed by the following entities: Hughes Aircraft

Company (Hughes); CPB; AMST; MCI-Lockheed; AT&T; ComSat; and the ABC, CBS and NBC Television Network Affiliates Association (Affiliates).

3. As set forth in the Notice, the purpose of the instant proceeding was to align to the extent practicable Part 2 of the Commission's Rules and Regulations with the international Radio Regulations as revised by the Space World Administrative Radio Conference held in Geneva, Switzerland in June–July 1971. The majority of the proposed changes set forth in the Notice evoked no response; however, several of the proposed changes, particularly those affecting sharing of certain microwave bands and the reservation of spectrum for satellite broadcasting, generated substantial controversy. These areas will be discussed in succeeding paragraphs.

BROADCASTING SATELLITE SERVICE

4. In the Notice, the Commission proposed to make the following bands available to the broadcasting-satellite service: 2500–2690 MHz shared; 11.7–12.2 MHz in Regions 2 and 3, shared; 41.0–43.0 GHz; and 84–86 GHz exclusive.

It was pointed out that there were no present plans to implement a broadcasting-satellite service on either a domestic or an international basis and that our intentions with respect to the service were to keep our options open for the foreseeable future during which the results of the WARC remained in force.

In carrying out these intentions, the Commission proposed to refrain from reflecting footnote 332A in the national Table of Frequency Allocations. This footnote, adopted at the Space WARC, would have permitted access to the band 620–790 MHz in developing a broadcasting-satellite service. This decision reflected a national unwillingness, at this time at least, to encourage development of the service in that band.

5. With the exception of ComSat, other respondents who commented in this matter supported the Commission's desire to refrain from reflecting footnote 332A in the 620–790 MHz band. ComSat, while concurring with the aforestated philosophy, did not agree that inclusion of the footnote would constitute a commitment to use the band for the broadcasting satellite service. On the contrary, ComSat believed that such an omission would indicate a lack of interest, on the part of the U.S., in developing the service in that band.

6. GE, NAB and AMST not only supported the concept of open options, but expressed the view that attempts to suballocate or designate the 11.7–12.2 GHz band or any portion thereof for a domestic broadcasting satellite service were inconsistent with that concept. AMST also expressed the same view with respect to the 41–43 GHz and 84–86 GHz bands.

7. The proposed allocation of the 11.7–12.2 GHz band drew the heaviest volume of comments. Although the proposed Table of Frequency Allocations reflected the broadcasting-satellite and fixed satellite services sharing on a coequal primary basis with the mobile service sharing on secondary basis, paragraph 11 of the Notice indicated the intention

to allocate the lower portion of the band to the fixed-satellite service on a primary basis with the broadcasting satellite service on a secondary basis while, in the upper portion, the allocation status would be reversed. The terrestrial mobile service would, of course, remain secondary throughout the 11.7–12.2 GHz band.

8. The majority of the comments filed with respect to the band 11.7–12.2 GHz cited the many uncertainties surrounding the parameters of any broadcasting satellite service. Uncertainties cited included not only the bandwidth, power flux density, channel requirements, orbit requirements and frequency sharing criteria, but questions with respect to the inter-face policies between the satellite and terrestrial broadcasting services were also raised. In an attempt to obviate these uncertainties in order to proceed with fixed-satellite services, whose parameters are more definable at present, several proponents (MCI, ComSat, Fairchild) suggested the reservation of orbital slots for the broadcasting-satellite service. Others, particularly CPB, HEW, AMST, GE, NAEB and NAB, recommended that any allocation be deferred until additional information concerning the system parameters becomes more defined. AT&T, in their reply comments, believed that such action would not be in the national interest and that an allocation consistent with the U.S. position to the WARC (i.e. as reflected in the proposed table) should be taken. ComSat, in their reply comments, believed deferral of an allocation at this time could be detrimental to our national interests if other countries' systems were developed which would conceivably dictate less than optimum channeling and/or orbital locations.

9. The proposed allocation of the 2500–2690 MHz band to the broadcasting satellite service was generally endorsed although CPB felt that sharing part of the band with the fixed-satellite service might impair the broadcasting service. Additionally, CPB expressed concern over the possibility of a virtual guardband established between radio astronomy and the broadcasting satellite service and believed that footnote U.S. 74 should provide adequate protection. In this connection CPB also expressed the hope that NASA proposed experiments using the ATS–F satellite would provide a better assessment of the interference potential in this regard.

10. A second proposed use of the band which elicited numerous comments dealt with the use of the 2500–2535 MHz band as a downlink and the 2655–2690 MHz band as an uplink in the fixed satellite service. The JCET, CPB, Hughes and ComSat expressed the desire that these bands be made available for use in the contiguous United States, as well as in Alaska, Guam and Hawaii, as proposed in footnote NG 102. Hughes also added that the band is highly desirable for uplinks because of development, power level, cost and reliability status of power transistor amplifiers. HEW cited a lack of clear guidance from the Commission as to the matching uplink for fixed satellite frequencies to feed the broadcasting satellite. ComSat, in their reply comments, saw no justification at this time for restricting the design of satellite systems by assigning a specific up-link frequency band for operation with the 2500–2690 MHz band. Fairchild, pointing to insufficient isolation between the transmitter and receiver, objected to the Commission's proposal, while Hughes Aircraft, basing their

opinion on the design of a satellite transponder using the proposed arrangement, disagreed. Additionally, GE cited possible interference problems in Alaska, Guam and Hawaii, and stated the need for additional restrictions on installation of transmitters in those areas to be served by community satellites in the 2500–2690 MHz band.

11. After a careful review and consideration of the comments and reply comments, the Commission believes the national interest, with respect to frequency allocations for broadcasting satellites, can best be served in the following manner. Initially, it should be reiterated that our basic policy remains as described in paragraph 9 of the Notice and referenced in paragraph 4 above, i.e., keep our options open during the period the Final Acts of the Space WARC remain in force.

12. With respect to the 620–790 MHz band, the Commission is not persuaded that the provisions of footnote 332A would be useful in the United States at this time. Our present posture remains that, to the best of our knowledge, there are no plans in the United States to implement a broadcasting satellite service on either a domestic or international basis in the band 620–790 MHz. The comments of ComSat notwithstanding, we believe reflection of footnote 332A in the 620–790 MHz band would at least imply a willingness nationally to see the service develop in the band—an implication not yet clearly justified. Accordingly, we prefer to adhere to our original posture of not reflecting footnote 332A in the 620–790 MHz band at this time.

13. While the Commission's proposals concerning the 11.7–12.2 GHz and the 41–43 and 84–86 GHz bands might appear to be inconsistent with the approach taken with the 620–790 MHz band insofar as the broadcasting satellite service is concerned (as was alleged by AMST), there is an important distinction. Whereas no plans are known to be under consideration in the United States to use the 620–790 MHz band for broadcasting satellites, studies and experimentation in communication technology by both industry and the NASA are being focused on the use of the 11.7–12.2 GHz band for that purpose. Additionally, since the allocations at 41–43 and 84–86 GHz were made on a world-wide basis, present no known problems domestically, and offer some degree of guidance for future planning, there has been no valid reason demonstrated why those higher bands should not be allocated to the broadcasting service at this time.

14. Our problem with respect to the 11.7–12.2 GHz band lies not with the proposal to allocate the band for the broadcasting satellite service, *per se*, but how sharing with the fixed-satellite and terrestrial mobile services shall be accomplished. As indicated in paragraphs 7 and 8 supra, the sharing methodology proposed drew substantail opposition. This opposition was based primarily on the uncertainties surrounding the technical parameters and the spectrum requirements for a broadcasting satellite service vis-a-vis the fixed satellite service.

15. After reviewing both the comments and the technological state-of-the-art and discussing the matter informally with representatives of industry and other Federal agencies, we agree the allocation proposed is premature and could influence adversely the development of either the broadcasting satellite or fixed satellite services or both.

While the assignment of either orbital arc or orbital slots, as suggested by MCI, ComSat and Fairchild might provide a better solution to the problems raised, the Space Conference rejected that approach. Rather, the Conference adopted a philosophy of flexibility, recognizing equal rights for the radio services and for the Administrations using the shared bands. Procedures were adopted in Article 9A for the accommodation of new operations in the face of operations in being to include relocation of satellites already in place, if necessary.

16. Allowing the band to lie fallow, as suggested by several respondents, would allow the time for each technology to develop more fully; however, as pointed out by AT&T, such action would represent ineffective and inefficient spectrum management. Moreover, we recognize the constraints such action could impose on design and use of satellite systems domestically, if other systems were developed by other countries in an incompatible manner. Consequently, we reject that posture.

17. On balance and, in an effort to retain our flexibility, we will withdraw the proposal to split the 11.7–12.2 GHz band between the broadcasting satellite and fixed satellite services and to make the former service primary in the upper half and secondary in the lower while reversing the status with the latter service. Instead, we believe a better approach is to reflect the allocation to the broadcasting satellite and fixed satellite services on a coequal primary basis with the terrestrial mobile services on a secondary basis over the entire 500 MHz between 11.7–12.2 GHz. However, a new footnote, NG 105, is being applied to the band, which will indicate our intention to make no assignments to the broadcasting or fixed satellite services in that band until the respective service and technical parameters are better defined. At such time, a Notice of Proposed Rule Making can be issued to focus attention on the respective service needs. Since system parameters and demands for either service are not yet clear, such action should not be harmful to proponents of either view. Such action is, however, a clear reflection of our ultimate general allocation intentions.

18. With respect to the 2500–2690 MHz band, the majority of the comments dealt with the restrictions imposed by proposed footnote NG 102. CPB, NAEB, JCET, ComSat and Hughes (in their reply comments) support the extension of the 2500–2535 MHz downlink and 2655–2690 MHz uplink bands in the fixed-satellite service to the contiguous United States as well as Alaska, Hawaii, Guam, Samoa and the Trust Territories. As pointed out in the Notice (paragraph 14), it was originally planned to limit such use to Alaska, but this use was extended to the Pacific areas to meet a need for an interface between the islands and the global communication networks after it was noted there were no terrestrial assignments in either Guam or Hawaii in the two bands. It was originally believed the present high usage coupled with that anticipated by educators in the 2500–2690 MHz Instructional Television Fixed Service band would preclude satisfactory sharing of the two 35 MHz links in the contiguous United States.

19. In view of the fact that terrestrial usage of the 2500–2690 MHz band appears concentrated in urban areas and that the educational community strongly supports extension of the fixed satellite allocation to the entire United States to meet their prospective needs for two-way

audio transmissions, we believe that, with careful system design, a relaxation of the proposed restriction is feasible. Consequently, we are making the 2500–2535 MHz and 2655–2690 MHz bands available to the educational community in the contiguous United States. Because we believe the thin-route fixed-satellite needs in Alaska and the Pacific region can be met by sharing those bands with educational services in those areas, we will retain footnote NG 102 as was proposed, at least until the needs of each service become more clearly defined. Due to the lower antenna elevation angles required in Alaska as opposed to those in lower latitudes, the restrictions imposed on terrestrial stations in the 2655–2690 MHz band by footnote NG 47 will still apply in order to protect satellite-borne receivers in that band.

20. Fairchild, in their comments, indicated that the limited separation between the uplink and downlink would "probably" make it difficult to provide sufficient isolation between the transmitter and receiver within the weight constraints normally associated with communication satellites. Hughes, in their reply comments, did not agree, basing their response on preliminary design work already conducted. While this question was not addressed by other respondents, we believe, based on available study results, that sufficient isolation can, in fact, be achieved.

21. HEW requested guidance with respect to a matching uplink band to feed broadcasting satellite use of the 2500–2690 MHz band. We agree with ComSat that the design of satellite systems should not be restricted at this time. Instead, it should be pointed out that the use of any fixed-satellite band would be appropriate for the purpose. Since, depending on the particular needs and system design, several bands could be required, it appears premature to make a designation at this time.

22. CPB, while pleased with the allocation of the 2500–2690 MHz band to the broadcasting satellite service, nevertheless expressed reservations about the utility of the band for that purpose in view of the need for sharing the two-35 MHz bands at each end with the fixed satellite service. Despite their reservations, they advocate use of the bands in the conterminous United States as well as Alaska and the Pacific basin proposed. They explain this inconsistency by expressing the belief that any broadcasting satellite service will likely develop at 12 GHz instead of at 2.5 GHz. Because the United States intends the band to be used for community reception of educational and public service material and for fixed satellite usage by the educational community in the United States (except as stated above), we believe the utility of the 2500–2690 MHz band has been enhanced.

23. CPB also expressed concern about possible constraints in view of a possible guardband between the radio astronomy service in the 2690–2700 MHz band and the broadcasting satellite service between 2500–2690 MHz. GE believed the problems regarding protection of radio astronomy from satellite operations in the 2500–2690 MHz band are overstated. They cited the fact that, because of the continued relative motion of the satellite, the probability of main lobe reception of out-of-band interference is low for the worst case and is zero for most.

24. We believe the incorporation of reasonable technical measures in the bands 2500–2690 and 2690–2700 MHz on behalf of each of the services involved will enhance sharing between broadcasting satellites and radio astronomy operations. The results of the forthcoming ATS–F tests should provide valuable data in this regard. Further, the provisions of existing footnote U.S. 74 are also relevant.

25. GE suggested that additional restrictions were needed on installation of transmitters in those areas of Alaska and the Pacific Basin to be served by community or thin route satellites. We agree that conditions of frequency coordination, siting, elevation angles and power flux density, etc. may need to be imposed. However, pending design of such systems, we are not prepared to delineate with greater specificity than presently imposed. We believe greater utility of the frequency band can be achieved at this time by calling attention to the interference potentials and permitting design flexibility than could be achieved by attempting to develop arbitrary standards based on hypothetical situations. In view of tests scheduled by NASA and other entities in connection with the ATS program, better information in this regard is expected to be made available in the near future.

FIXED SATELLITE SERVICE

26. The frequency bands allocated by the Space WARC to the Fixed Satellite Service were reflected in paragraph 19 of the Notice of Proposed Rule Making. In addition to the 2500–2690 MHz and 11.7–12.2 MHz bands which were proposed for sharing with the broadcasting satellite service and which were discussed above, the band 6625–7125 MHz and the bands 10.95–11.2, 11.45–11.7, 17.7–19.7 and 19.7–21.2 GHz proposed for allocation to the fixed satellite service generated the most comment. The allocation of the 59–64 GHz band to Government services drew significant discussion also.

27. Apparently because the U.S. proposal to allocate the 6625–7125 MHz band to the fixed satellite service on a coequal shared basis with terrestrial fixed and mobile services in Region 2 was a last minute change to our position and had been misunderstood or at least inadequately explained, API, NAM and the UTC directed a great deal of comment toward it. All three expressed concern for adequate spectrum in which operational fixed microwave growth could be accommodated in this region of the spectrum. As the proposal overlaps the 6525–6875 MHz band, now allocated for private microwave services, it was believed that use of the band by fixed satellites, as proposed by footnote NG 103, would compromise use of the upper 250 MHz by those services. API expressed the opinion that no public interest consideration had been shown for raising footnote 392 AA from the WARC accepted secondary status of the fixed-satellite service to a coequal shared status in the United States.

28. As pointed out in paragraph 14 of the Report and Order in Docket No. 18294, adopted December 18, 1970, the U.S. proposal regarding the 6625–7125 MHz band was made to the WARC to provide for this essentially one-way service in an economical manner based

upon representation of the CBS Television Network Affiliates Association. Additionally, the Affiliates submitted comments and an engineering statement in Docket 16495 which showed that the 6625–7125 MHz band was more effective and efficient for satellite downlink, primarily because of increased rainfall attenuation at the higher frequency bands. The Commission's decision in Docket 18294 (the domestic satellite proceeding) considered the public interest aspects of affording local television stations an opportunity to own and operate their own stations should they so desire.

29. With respect to possible interference from space stations to terrestrial stations, the power flux density limits established by footnote No. 470 NM of the Final Acts of the WARC would appear to provide more than adequate protection for terrestrial systems operating in the 6625–7125 MHz band. Further, the burden of providing the coordination contour and proof of non-interference would, as pointed out by ComSat in their reply comments, rest with a potential earth station applicant. In view of the above, we find no merit in the objections of API and UTC to the application of footnote NG 103 to the band 6625–7125 MHz as proposed.

30. UTC also took exception to the Commission's proposal to reallocate the 17.7–19.7 and 27.5–29.5 GHz bands from the fixed and mobile services generally (e.g. both private and common carrier use) to exclusively common carrier. Their objections are based upon a need to provide spectrum relief for operational fixed services as the bands below 13 GHz become saturated. UTC suggested that sharing between terrestrial operational fixed and space systems can be accommodated just as sharing between terrestrial common carrier and space systems.

31. As AT&T correctly points out in their reply comments, the private users are not being deprived of spectrum availability in that region by virtue of the proposal. Other bands, such as 21.2–22.0 GHz, 22.0–23.6 GHz, 31.0–31.2 GHz and 38.6–40.0 GHz are available although the first two bands cited are presently to be shared with Government services. UTC has not shown any particular needs for this range of the radio spectrum as yet nor can such a showing be made at this time because lower bands allocated for operational fixed use are not yet saturated. On the contrary, common carrier bands at 4, 6 and 11 GHz are rapidly becoming saturated.

32. Further, as UTC is aware, the Commission undertook in 1958 a lengthy proceeding in Docket 11866 to determine spectrum needs and allocation policies in the bands above 890 MHz. Among the resulting policies enunciated by the Commission was the need for separate bands for common carrier and private communication systems. Based principally on differing requirements, reliability and needs between the common carrier and private services, this policy has remained; indeed the policy was underscored pursuant to proceedings in Docket 14729 in 1963 and no showing has been made that a reversal of that policy is now in order.

33. Nevertheless the Commission, on November 29, 1972, adopted a Further Notice of Proposed Rule Making in Docket No. 18920, in which it was pointed out in footnote 7a, that, before finalizing re-

striction of the 18 GHz band to common carrier use, we would consider any comments filed therein as to whether private users should also have access to the band on either a shared basis or by allocating a portion for private use.

34. Accordingly, although on the basis of the record in this proceeding, adoption of our proposal to allocate the bands 17.7–19.7 and 27.5–29.5 GHz to common carrier would be justified, we will postpone final decision with respect to the 17.7–19.7 GHz band until the comments in Docket 18920 have been considered. We will, however, allocate the band 27.5–29.5 GHz to the Common Carrier Radio Services. A new footnote NG 106, is being applied to the lower band to reflect this decision.

35. In their comments and reply comments, ComSat and AT&T respectively, differ concerning the intent with respect to limiting, by footnote NG 104, the allocation of the 10.95–11.2 and 11.45–11.7 GHz bands to the international satellite service. ComSat questions whether such a general understanding existed prior to and during the WARC and cites the fact that the Final Acts do not reflect such an understanding. ComSat further believes the bands should be available for domestic satellite communication as well, and offers comments showing that the bands could be shared by terrestrial, domestic satellite and international satellite services. ComSat concedes, however, that such sharing could influence the system design of specific systems; however, they believe more efficient use of the spectrum would result.

36. AT&T, in response, cites correspondence between it and the Commission as well as proceedings in Docket 18294 which reflect the intent for the two bands in question. AT&T, in their comments, requested the insertion of the word "transoceanic" in footnote NG 104 to so limit sharing to those international applications.

37. As the Commission previously indicated in Docket 18294 (6th Notice of Proposed Rule Making, paragraph 38, and 7th Report and Order, paragraph 28), the anticipated profusion of earth stations coupled with the growth of terrestrial microwave stations in the 10.7–11.7 GHz band was expected to create severe problems if the domestic satellite service were permitted co-use of the bands. While the position may be somewhat inconsistent with that taken with respect to the 4 and 6 GHz bands, as alleged by ComSat, the Commission is not persuaded that a change in the position previously stated is warranted at this time. Accordingly, ComSat's arguments are denied.

38. With respect to the request of AT&T regarding modification of footnote NG 104 to include the word "transoceanic" in further restriction of international satellite operations, we do not concur. As pointed out by ComSat, such a restriction could be interpreted to preclude service to other countries of the western hemisphere. We believe the number of earth stations involved with such operations to be so small as to create few problems of potential interference to the terrestrial network. Therefore, footnote NG 104 will remain as proposed.

39. Several respondents, notably AT&T, NAM, GE and Fairchild, recommended action be initiated to extend non-Government sharing

of certain frequency bands into spectrum allocated to Government services. These bands included the 59–64 GHz, 7125–8400 MHz, and 14.5–15.35 GHz bands. Such action is outside the scope of the instant proceeding; however, should the necessity arise and adequate justification become available, such action may be initiated in the Commission's continuing review with the Federal Government of spectrum allocation matters.

40. Fairchild indicated the 6625–7125 MHz band fixed satellite downlink approved along with the 14.0–14.5 GHz uplink as a companion band could pose problems because of the possibility of second harmonic interference and urged the Commission to investigate the possibility of a more compatible uplink.

41. As pointed out in paragraph 17 of the Notice, the uplink band originally proposed by the United States, 12.75–13.25 GHz, was not accepted by the WARC. As a compromise, the band 14.0–14.5 GHz was allocated. Since neither the WARC Final Acts nor the Commission's Rules match a given uplink band with a specific downlink band, this newly-allocated band might be employed by domestic systems using the 11.7–12.2 GHz downlink band (subject to footnote NG 105), and by international systems using the 10.95–11.2 and 11.45–11.7 GHz downlink bands.

MISCELLANEOUS ISSUES

42. ARINC/ATA, in their comments, generally supported the Commission's proposal relating to the aviation needs, but raised two points. The first deals with the need to accommodate the conventional aeronautical mobile environment as well as the application of space techniques. Accordingly, they believed that terrestrial use of the 1535–1660 MHz band for the aeronautical mobile (R) services should be on an equal basis with the aeronautical mobile satellite (R) services. The second issue deals with a Petition for Rule Making (RM 1861) which was filed with the Commission on September 30, 1971 and which requests allocations for two sub-bands of 4 MHz each to accommodate projected 1985 control requirements. That petition is still pending before the Commission.

43. Both of these issues were raised during the development of the United States position for the Space WARC in Docket 18294. We are aware the matters have not yet been formally considered and that dispositive actions have not yet been taken. While the Commission understands the concern of ARINC in these matters, we are also aware of discussions now taking place within the aviation community, both domestically and internationally, regarding aeronautical needs in the band. Additionally, the Maritime WARC scheduled for 1974 is also expected to consider use of the 1535–1660 MHz band, portions of which are shared between the Maritime Mobile Satellite and Aeronautical Mobile Satellite Services. We therefore believe consideration of the ARINC/ATA proposals in this proceeding is premature and inappropriate. Accordingly they are denied

44. General Electric also submitted comments concerning the suitability of bands allocated for the maritime and aeronautical satellite

needs. Their comments were based upon an internal study which indicates that the allocations are somewhat less than optimum. GE raised the matter not as a recommendation, but for information primarily because the study is incomplete. Accordingly, we will note the comments and suggest that further information derived be made available when the time is more appropriate and conclusions are more reliable.

45. GE also endorsed the Commission's proposals with respect to the Radio Navigation, Standard Frequency and Time Signal Satellite Services, and suggested changing the wording of certain footnotes (U.S. 201, for example) to read "outside of U.S.A. territorial limits" where flux density limitations are imposed. Such action, GE believes, would be more consistent with the wording of (332A) where a distinction between domestic and international interference protection might be desired. In addition to the practical problem of adhering to specified limits at prescribed boundaries, it should be noted the power flux density limits were established to meet acceptable operational parameters of the earth exploration satellite service to permit sharing with existing services. Further, such an approach is preferable, since by implication, the proposed condition would permit greater power flux density limits domestically—a condition not intended. Accordingly, the suggestion is denied.

46. In view of the foregoing, the Commission believes the changes discussed are in the public interest, convenience and necessity. Accordingly, IT IS ORDERED, in accordance with authority contained in Section 4(i) and 303 of the Communications Act of 1934, as amended, the Table of Frequency Allocations contained in Part 2 of the Commission's Rules and Regulations is amended as reflected in the attached Appendix [1] effective March 1, 1973. Although the Commission is making this Order effective with the publishing of the Federal Register in which this decision appears, it should be noted the Final Acts of the Space WARC enterd into force internationally on January 1, 1973.

47. IT IS FURTHER ORDERED that the proceedings in Docket 19547, ARE HEREBY TERMINATED.

BEN F. WAPLE, *Secretary.*

[1] Amendment to rules are not included in this publication. For text of changes see the Federal Register of March 1, 1973, 38 F.R. 5562.

109-030—73——8

F.C.C. 73R-95

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ST. CROSS BROADCASTING, INC., SANTA CRUZ, CALIF. JAMES B. FENTON, GRANT R. WRATHALL, JR., LAWRENCE M. WRATHALL AND LORETTA WRATHALL, D.B.A. PROGRESSIVE BROADCASTING CO., APTOS-CAPITOLA, CALIF. For Construction Permits	DOCKET NO. 19503 File No. BP-18014 DOCKET NO. 19506 File No. BP-18221

MEMORANDUM OPINION AND ORDER

(Adopted March 1, 1973; Released March 5, 1973)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER DISSENTING WITH STATEMENT. BOARD MEMBER NELSON EXPRESSING ADDITIONAL VIEWS WITH STATEMENT.

1. This proceeding involves the mutually exclusive applications of St. Cross Broadcasting, Inc. (St. Cross) and Progressive Broadcasting Company (Progressive) for a new standard broadcast station at Santa Cruz, California and Aptos-Capitola, California, respectively.[1] The Commission designated the applications for hearing by Order, FCC 72-422 (37 FR 10611, published May 25, 1972), specifying, *inter alia*, Suburban Community and engineering issues against Progressive,[2] and areas and populations and 307(b) issues. Now before the Review Board for consideration is a motion to enlarge issues, filed June 9, 1972, by St. Cross, seeking the addition of a further Suburban Community issue and *Suburban* and cross ownership/cross interest issues against Progressive.[3]

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[1] The applications of Milo Communications Corporation (Milo), Do. 19504, and Lloyd M. Marks (Marks), Do. 19505, also designated for hearing, were dismissed by the Administrative Law Judge pursuant to their petitions to dismiss. Marks' application was dismissed by Order FCC 72M-853, released June 30, 1972; Milo's application was dismissed by Order FCC 72M-1325, released October 25, 1972.

[2] The Commission specified a Suburban Community issue against Progressive because its proposed 5 mv/m contour would penetrate Salinas, California, a city with a population of over 50,000, which is more than twice the size of Aptos-Capitola. The Commission found that the applicant did not effectively rebut the presumption that it realistically proposes to serve the larger city. See Policy Statement on *Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 FCC 2d 190, 6 RR 2d 1901 (1965).

[3] Also before the Board are: (a) opposition, filed June 30, 1972, by Milo; (b) opposition, filed July 3, 1972, by Progressive; (c) Broadcast Bureau's comments, filed July 3, 1972; (d) reply to (a), filed July 14, 1972, by St. Cross; (e) reply to (c) filed July 14, 1972, by St. Cross; (f) reply to (b), filed July 17, 1972, by St. Cross; (g) further opposition, filed August 7, 1972, by Progressive; (h) a letter received August 22, 1972, from St. Cross; (i) a letter received August 25, 1972, from Progressive. Insofar as the motion seeks to add issues against Milo and Marks, it is now moot and will be dismissed. See note 1, *supra*. Progressive's "further opposition" to St. Cross' motion, filed August 7, 1972 is an unauthorized pleading and good cause for its acceptance has not been shown. Therefore, it will be dismissed. See the Board's Public Notice on the *Filing of Supplemental Pleadings Before the Review Board* No. 90836, released October 11, 1972. See also *Southern Broadcasting Company (WGHP-TV)*, FCC 73R-17, — FCC 2d —, released January 12, 1973.

SUBURBAN COMMUNITY ISSUE

2. In support of its request for another Suburban Community issue against Progressive, St. Cross argues that Aptos (population 8,704) [4] and Capitola (population 5,080), are small communities which are completely dominated in their political, economic, and social life by the neighboring city of Santa Cruz (population 32,076). St. Cross also asserts that Progressive could adequately cover Aptos-Capitola with a power of 250 watts and that the 5 kw power proposed indicates that Progressive realistically intends to serve Santa Cruz. Finally, St. Cross urges that the ascertainment efforts conducted by Progressive support its allegations, in that contacts with community leaders were oriented to Santa Cruz City and the county as a whole rather than to Aptos-Capitola. According to St. Cross, the needs revealed by Progressive's survey are not peculiar to Aptos-Capitola, and, furthermore, those needs are presently being met and can be met by stations located in Santa Cruz City.

3. In its opposition, Progressive first argues that St. Cross has failed to make the threshold showing necessary for addition of the requested issue, claiming that no concrete facts have been presented to support the allegations concerning either Aptos-Capitola's dependence on Santa Cruz or Progressive's engineering proposal. Progressive further asserts that the allegations made by St. Cross are not in accord with the facts and that only a limited suburban-city relationship exists between Santa Cruz and Aptos-Capitola. Attached to Progressive's pleading are data in support of its allegations that Aptos and Capitola are economically and politically independent and that social, recreational and cultural facilities exist outside of Santa Cruz City. Its ascertainment efforts, Progressive claims, were directed to the Aptos-Capitola area and resulted in the identification of the area's distinct needs and interests. Finally, Progressive submits an exhibit which, it claims, shows that the power it proposes complies with Commission regulations for service to its specified community.

4. The Broadcast Bureau supports addition of the issue, noting that Progressive proposes to place a 5 mv/m signal over most, if not all, of Santa Cruz, a city with a substantially larger population than Aptos-Capitola. The Bureau submits that a less powerful proposal could serve Aptos-Capitola, rather than one which is directionalized to place a major lobe over Santa Cruz. The Bureau also agrees with St. Cross that the community needs listed by Progressive in its application are as applicable to Santa Cruz County as a whole, including Santa Cruz City, as they are to Aptos and Capitola.

5. In its reply to Progressive's opposition, St. Cross contests the facts alleged in Progressive's pleadings and the implications to be drawn therefrom, concluding that Progressive has not rebutted movant's showing that Santa Cruz City dominates the surrounding area and that the needs of Aptos-Capitola are essentially the same as those of the rest of the county, including Santa Cruz City. An

[4] All population figures herein are derived from the 1970 U.S. Census.

evidentiary hearing, urges St. Cross, is therefore necessary to resolve the question.

6. The Review Board is of the view that the pleadings raise a substantial question as to whether Progressive's proposed facility will realistically provide service for the two communities it has specified in its application or for the nearby larger community of Santa Cruz. This question is raised in large part by Progressive's engineering proposal. The Board agrees with the Broadcast Bureau that 5 kw of power does, on its face, seem to be greatly in excess of that needed to provide adequate coverage of the specified communities. The gravity of this question is compounded by the fact that Progressive plans a directionalized signal, with one major lobe of its pattern substantially, if not completely, covering Santa Cruz City with a 5 mv/m signal. Furthermore, Progressive has failed to make an adequate showing that the proposed power and directional system indicate a clear intention to direct its service to its specified community. The applicant has merely stated that its proposed power would be "adequate" and that a station with less power "would not be competitive signal wise" in neighboring communities with the signals of other area stations.[5] In our opinion, this is not an adequate explanation and raises serious questions concerning Progressive's intentions. Compare *Creek County Broadcasting Co.*, 31 FCC 2d 462, 22 RR 2d 891 (1971). *Cf. Babcom, Inc.*, 12 FCC 2d 306, 12 RR 2d 998 (1968).

7. Furthermore, St. Cross' motion raises a substantial question as to whether the needs and interests of Aptos-Capitola are truly distinct from those of Santa Cruz City, a neighboring city with over two times the combined populations of the specified communities. Progressive has, in fact, shown that in some respects the smaller communities are definables areas apart from Santa Cruz City with some problems which are distinct from those of a larger urban community. However, the pleadings and Progressive's community survey showing indicate that the economic, cultural and recreational activities of those areas may be so integrated with or dependent upon Santa Cruz City that Aptos and Capitola should not be considered distinct and independent communities for 307(b) purposes. Progressive's "community profile", submitted as an amendment to its application, deals in general with Santa Cruz County as a whole and includes specific references to Aptos, Capitola and Santa Cruz City with no distinctions drawn to indicate that all three communities are other than similar elements of that integrated whole. Furthermore, a large number of the civic, political, and cultural organizations listed by Progressive in its pleadings as serving Aptos and Capitola appear to encompass the entire county [6] or the Santa Cruz-mid-county area,[7] while not more than 25% of all the organizations listed in Progressive's community survey, including those contained in its pleadings, appear to direct their activities exclusively to Aptos, Capitola, or at least the mid-county area as

[5] KSCO in Santa Cruz; KDON and KSBW in Salinas.
[6] For example, the Santa Cruz County Fair, Women's League of Voters of Santa Cruz County, Santa Cruz County Central Labor Council, Santa Cruz County Arts Commission.
[7] For example, the Local Red Cross (City of Santa Cruz and Mid-County), United Fund—City of Santa Cruz and Mid-County.

distinguished from Santa Cruz City. The majority of the ascertained needs listed by Progressive in its exhibit, including those given the greatest priority by Progressive, also are stated in terms of problems which encompass both Santa Cruz City and its neighbors.[8] Finally, while Progressive has cited in its opposition several needs ascertained from its random survey that relate specifically to Aptos-Capitola, there are at least that many references to Santa Cruz City or county-wide problems listed in that survey. In sum, we have found that Progressive's ascertainment efforts, on their face, indicate that the communities specified by Progressive in its application may be so dominated by or integrated with their larger neighbor that they are not to be considered distinct and independent communities within the meaning of section 307(b). This question can best be resolved within the framework of a full evidentiary hearing. Therefore, we will broaden the scope of the existing Suburban Community issue (see paragraph 1, *supra*) to encompass a determination with regard to the city of Santa Cruz.

SUBURBAN ISSUE

8. Next, St. Cross argues that certain aspects of Progressive's ascertainment efforts raise questions which warrant addition of a *Suburban* issue. Movant alleges that the efforts show that Progressive has not adequately ascertained the needs of the specified communities, but only those of the entire Santa Cruz County area. The Board does not believe that such an issue is warranted. While Progressive's ascertainment efforts do raise a question whether the needs of Aptos-Capitola and Santa Cruz are distinct, St. Cross has not shown that the needs listed by Progressive are not those of Aptos-Capitola, that the process of ascertaining those needs was inadequate or improper, or that the programming proposed by Progressive was not responsive to the needs ascertained.

CROSS OWNERSHIP/CROSS INTEREST ISSUES

9. St. Cross alleges that standard broadcast station KSAY, San Francisco, California, is owned in part by three of the Progressive partners and, furthermore, that the controlling partner and chief engineer of KSAY is both the father of those partners and the consulting engineer for the Progressive application. St. Cross claims that since there will be an overlap of the 1.0 mv/m contour of KSAY and the 1.0 mv/m contour of Progressive's proposed station, cross ownership and cross interest issues are warranted.[9] Progressive and the Broadcast Bureau oppose the request. Progressive claims that the three Progressive partners, together own only a 16% interest in KSAY

[8] It is apparent from Progressive's list of needs that "county problems" are those of both Santa Cruz and the Aptos-Capitola area. We also note that several of the problems referred to as "county" problems in Progressive's exhibit are referred to as problems of "Aptos-Capitola" in the pleadings before us. An evidentiary hearing will also allow this ambiguity to be resolved.

[9] The Commission's cross ownership rule (Section 73.35(a)) forbids ownership or control of two stations whose 1.0 mv/m contours overlap. The derivative cross interest policy forbids meaningful interests in two stations whose 1.0 mv/m contours overlap and which serve substantially the same area. See *United Community Enterprises, Inc.*, 37 FCC 2d 953, 25 RR 2d 745 (1972).

as limited partners and that a trustee owns another 16% for their benefit. Progressive asserts that neither the limited partnership interests nor the trust arrangement give Progressive's partners "any voice whatsoever" in the policies or management of KSAY. The Broadcast Bureau argues that St. Cross did not utilize acceptable engineering methodology and, therefore, that no adequate showing of overlap has been made. In reply, St. Cross asserts that it has established overlap and that the positions held by Grant R. Wrathall (father of the three Progressive partners) and his relationship with the Progressive partners require addition of the requested issues.

10. In our opinion, St. Cross has not raised a sufficient question of overlap to warrant addition of the requested issues. St. Cross utilizes measurement data contained in the Progressive application to reach its determination of the proposed Progressive 1.0 mv/m contour. The data were taken on a test transmitter located near the proposed Progressive site from which the soil conductivities were determined for paths along 82 and 108 degrees. Contending that measured ground conductivity is "normally" valid over a plus or minus 10 degrees from the measured radial, St. Cross submits that the FCC Figure M–3 conductivity (which is higher) must therefore be used between 92 and 98 degrees and has so calculated the extent of the contour at 95 degrees. The resulting 1.0 mv/m contour (based on calculations made along 82, 95 and 108 degrees) shows overlap with what St. Cross alleges to be KSAY's 1.0 mv/m contour.[10] We are constrained to note that St. Cross' depiction of the Progressive contour along 92 degrees [11] extends more than 10 miles farther (thus showing overlap) than it would based on the 82 degree measured conductivity which St. Cross has accepted as accurate.

11. Accepting, *arguendo*, St. Cross' depiction of Progressive's proposed 1.0 mv/m contour and ignoring the resultant discrepancy, we also find that St. Cross has not depicted the KSAY contour in accordance with the methods prescribed by the Commission's rules and policies. The engineering report submitted by St. Cross in support of its motion includes measurement data taken on a "stub" radial along a path 142 degrees from KSAY.[12] These "stub" radial measurements are not acceptable. St. Cross has failed to comply with Rule 73.186, which requires that the inverse distance field be determined by taking measurements within a few miles of the transmitter.[13] *Lake Valley Broad-*

[10] St. Cross has submitted a map along with the motion which depicts the alleged overlap.
[11] The 92 degree azimuth crosses within the area of alleged overlap.
[12] The St. Cross data include the following seven measured points:

Point No.	Distance (miles)	Measured signal (mv/m)
1	58.5	1.52
2	64.5	1.03
3	68.0	1.01
4	71.5	0.98
5	76.0	0.98
6	80.0	0.94
7	83.5	0.93

[13] The determination of the inverse distance field provides a necessary check as to whether the transmitter being measured is operating at its authorized power.

casters, Inc., 38 FCC 622, 4 RR 2d 913 (1965). Instead, St. Cross has stated that it "assumed" an inverse distance field for the measured radial. Finally, if the proposed Progressive 1.0 mv/m contour is as depicted by St. Cross and if the "stub" data with regard to KSAY are accurate, we still do not find overlap. We find, instead, that St. Cross has incorrectly depicted the extent of the KSAY 1.0 mv/m contour. As shown in note 12, *supra*, the KSAY signal beyond 71.5 miles was determined to be *less* than 1.0 mv/m. St. Cross has depicted the KSAY 1.0 mv/m contour as extending greater than that distance from KSAY. However, using acceptable methodology [14] at 71.5 miles there would be no overlap with the Progressive 1.0 mv/m contour, even as the Progressive contour is depicted by St. Cross. In view of the above, the Board will not add the requested issues.

12. Accordingly, IT IS ORDERED, That the further opposition to motion to enlarge issues, filed August 7, 1972, by Progressive Broadcasting Company, IS DISMISSED; and

13. IT IS FURTHER ORDERED, That the motion to enlarge issues, filed June 9, 1972, by St. Cross Broadcasting, Inc., IS GRANTED to the extent indicated below, IS DISMISSED as against Milo Communications Corporation (KMPG) and Lloyd M. Marks, and IS DENIED in all other respects; and

14. IT IS FURTHER ORDERED, That the Suburban Community issue against Progressive Broadcasting Company, specified by the Commission in the designation Order (FCC 72-422) IS BROADENED to include a determination with respect to the city of Santa Cruz, California.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING STATEMENT OF BOARD MEMBER SYLVIA D. KESSLER

On the basis of my separate concurring opinion in connection with the Board's decision in the *Greensburg* case (Docket No. 18868) (FCC 73R-53), released February 2, 1973, I would certify the instant matter to the Commission. As there stated in greater detail, (a) the Court's [15] call for clarification of the Suburban Community issues, *viz.*, the type and degree of evidence; and (b) the irreconciliable conflicts of view not only among applicants but also among the Commission's own staff, *i.e.*, its Broadcasting Bureau, administrative law judges, and members of this Board, create a unique state of affairs and novel policy questions which require Commission attention. Without question, clarification is required not only as to the type and degree of evidence required with respect to the Suburban Community issues, it is also required in the context of the interrelationship of the more recently adopted *Primer on Community Ascertainment* [16] to the Suburban Community

[14] The methodology for using this data, were it acceptable, is established in *Denver Area Broadcasters*, 38 FCC 583, 4 RR 2d 895 (1965) (para. 16).
[15] *Northern Indiana Broadcasters, Inc.* v. *FCC*, 148 U.S. App. D.C. 327, 459 F.2d 1351, 23 RR 2d 2113 (1972).
[16] 27 FCC 2d 650 (1971).

issues, if not in the context of the interrelationship of the *Primer* to the Suburban Community policy, *per se*.

Hence, pending Commission clarification, continued specification of Suburban Community issues by the Board is wasteful of the adjudicatory hearing processes, quite apart from the fact that litigation with respect to such issues is both costly and time consuming to all concerned, namely, the applicants, the Broadcast Bureau, administrative law judges, and this Board. Under these circumstances, certification to the Commission of all requests for Suburban Community issues is more conducive to the orderly and efficient administration of its business. In reaching my conclusions here, I am, of course, mindful of the fact that the Board here is merely enlarging or broadening the scope of an existing Suburban Community issue to encompass another larger city in the same general area, namely, Santa Cruz, whereas the original issues related to Salinas only. However, in principle I cannot distinguish what has occurred here from the situation where the Board adds a new issue. Both result in protracted hearings requiring substantial evidence under circumstances where the parties cannot be deemed to be on "notice" as to the type and degree of the evidence required to rebut the Suburban Community presumption.

ADDITIONAL VIEWS OF BOARD MEMBER JOSEPH N. NELSON

I agree with Dissenting Statement that the Court's decision in *Northern Indiana* requires clarification and revision by the Commission of its criteria in *Suburban Community Policy* cases. It is my view that no application can be denied on the basis of the Commission's existing criteria. However, since the issue in the instant case was framed by the Commission, I would apply the Court's holding at the time of decision should the subject application be denied.

F.C.C. 73-212

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of THE WESTERN UNION TELEGRAPH CO. (WESTERN UNION) Transmittal No. 6834; and Revisions of Telex Tariff F.C.C. No. 240 and Teleprinter Exchange (TWX) Tariff F.C.C. No. 258	Docket No. 19696

MEMORANDUM OPINION AND ORDER

(Adopted February 21, 1973; Released March 6, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ISSUING A SEPARATE STATEMENT IN WHICH COMMISSIONERS ROBERT E. LEE, H. REX LEE, REID, WILEY AND HOOKS JOIN; COMMISSIONER JOHNSON CONCURRING IN PART AND DISSENTING IN PART AND ISSUING A STATEMENT.

1. On December 29, 1972, revised tariff schedules were filed by Western Union under Transmittal No. 6834 to become effective February 28, 1973.[1] These revised schedules apply to the interstate Telex and TWX services provided by Western Union throughout the United States. In the case of both Telex and TWX the basic rate elements will include an access charge, an installation charge for such access, and message or usage charges that vary with time and distance of transmission of messages. Additionally, charges will be applicable where a customer desires Western Union terminal equipment.

2. The specific changes made in the revised tariff are described briefly as follows:

a. Customers will be permitted to provide their own teleprinter terminal equipment from sources other than Western Union subject to certain technical limitations to prevent electrical interference in the Telex and TWX services;

b. Two new rate elements are added to the tariff; an "access charge" which will be applicable to all customers, and a "terminal charge" which will be applicable only to customers who choose to lease terminal equipment from Western Union.

c. The installation, move, and monthly rental charges for both Telex and TWX terminal equipment are increased;

d. The Telex usage charge is increased by eliminating a quantity discount now allowed under the present tariff; and

e. A new regulation is added to the effect that customers may terminate Telex and TWX services on 30 days written notice to Western Union.

[1] A Petition For Suspension and Investigation was filed by the Secretary of Defense on February 14, 1973 as was a Petition for Rejection and Suspension by Western Union International, Inc. A Reply was filed by Western Union on February 20, 1973. These petitions have been considered in our disposition of this matter.

3. Western Union estimates that (a) the overall effect of the entire package tariff revisions will be to produce additional revenues of about $12 million in 1973, $14.5 million in 1974 and $16.3 million in 1975; (b) the increased revenues will increase the overall level of earnings of Western Union from a current level of 5.4% to 6.7% in 1973; (c) the Telex rate proposals would increase the Telex pre-tax earnings from 14.8% to 18.0% in 1973; and (d) the TWX rate proposals would increase the TWX pre-tax earnings from 8.6% to 12.3% in 1973.

4. To support its tariff revisions herein, Western Union has submitted the cost data and other information required by Sec. 61.38 of our rules. There are two principal reasons advanced by the carrier for the revisions. With respect to the liberalization of the interconnection provisions in the Telex and TWX tariffs, the carrier states that this is being done to implement its commitment to do so at the time of the Commission's approval of Western Union's acquisition of TWX from the Bell System (24 FCC 2d 664 676). As to the rate increases and related changes the carrier contends that its current overall earnings are inadequate; and that, unless rate relief is granted in these two services where shrinkage and shifts from rate increases would be at a minimum, Western Union is faced with a decline in its over-all return. The decline is caused by revisions in settlement agreements with the international Telex carriers which will reduce Western Union's Telex revenues by about $2.2 million in 1973, and the need to finance already committed new plant and equipment totalling about $3.9 million in 1973 and $12.4 million in 1974 in the Telex and TWX services.

5. The increase in the Telex rates amounts to an increase of about 10%. This is the fourth increase in the rates for that service over the past six years (4% in 1967; 10.6% in 1969; 8.8% in 1971). Western Union estimates a pre-tax earnings for Telex of 19.2% in 1972 and 18.0% in 1973 with the proposed increase. The TWX rate increase is the first by Western Union following the acquisition of that service from the Bell System. The estimated pre-tax returns from TWX is 7.8% for 1972 and 12.3% for 1973 with the proposed increases. On the basis of Western Union's current earnings level of 5.4% applicable to its total operations, it would appear that there may well be justification for appropriate revenue relief. However, we are of the opinion that the magnitude and nature of these increases present questions of lawfulness that should be resolved by investigation and hearing.

6. The liberalization of the tariffs for interconnection of customer-provided terminal equipment appears in general to be in keeping with the principles of our decision in *Carterfone* and we regard it as a forward step toward more effective use by the public of Western Union's services. There are, however, certain questions raised with respect thereto. For example, the new "access charge" will apply to all customers whether they use carrier or non-carrier terminal equipment, even though the "access charge" covers, in part, costs that are generated only by customers using non-carrier terminals; the Telex subscribers in some cases may provide their own network signalling unit whereas no TWX subscriber may do so; Western Union appears to disclaim all liability for transmission of signals sent or received by non-carrier ter-

minal equipment; and Western Union proposes to maintain customer-provided terminal equipment on an undefined lease or maintenance basis at charges not shown in the tariffs. Accordingly, we are of the opinion that these questions should be resolved on the basis of a hearing record.

7. In view of the foregoing, we are unable to conclude at this time that all features of the tariff revisions are just and reasonable and free of undue discrimination within the meaning of Section 201(b) and 202(a) of the Act or that the proposal of the carrier to impose charges not in the tariffs is in conformity with Sec. 203 of the Act. We shall therefore designate the revised tariff schedules for investigation and shall suspend the effectiveness thereof and enter an accounting order providing for possible refund. However, in view of the carrier's current earnings situation; the desirability of allowing customers the benefit of the proposed liberalized interconnection policy at an early date, and the protection afforded customers by the accounting and refund order we are providing herein, we will suspend the said tariff schedules for a period of one day.

8. In the present case, we believe it desirable that the Administrative Law Judge render an Initial Decision and that the trial staff of the Common Carrier Bureau be separated from both the Commission and the Administrative Law Judge. As we have previously explained, 32 FCC 2d at pg. 90, the separation of the trial staff simply means that such staff: (1) will not make any oral presentations to the Administrative Law Judge or the Commission without the other parties being present, and (2) will not make any written presentations to the Administrative Law Judge or the Commission which are not served on the other parties.

9. Accordingly, IT IS ORDERED, That, pursuant to the provisions of Sections 201, 202, 203, 204, 205 and 403 of the Communications Act of 1934, as amended, an investigation is instituted into the lawfulness of the tariff schedules filed by The Western Union Telegraph Company submitted with Transmittal No. 6834 including any cancellations, amendments or reissues thereof; and no changes shall be made in such tariff schedules during the pendency of this proceeding without prior approval by the Commission;

10. IT IS FURTHER ORDERED, That, pursuant to the provisions of Section 204, the tariff schedules filed by The Western Union Telegraph Company submitted with Transmittal No. 6834 ARE HEREBY SUSPENDED until March 1, 1973, and that Western Union, as to the operation of such tariff schedules, shall, in the case of all increased charges and until further order of the Commission, keep accurate account of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and upon completion of the hearing and decision therein, the Commission may by further order require the refund thereof, with interest, pursuant to Section 204 of the Act, and the carrier shall file such reports on the amounts accounted for as aforesaid as the Chief, Common Carrier Bureau shall require;

11. IT IS FURTHER ORDERED, That, without in any way limiting the scope of the investigation, it shall include consideration of the following:

(1) Whether the charges, classifications, practices, and regulations published in the aforesaid tariffs are or will be unjust and unreasonable within the meaning of Section 201(b) of the Act;

(2) Whether such charges, classifications, practices, and regulations will, or could be applied to, subject any person or class of persons to unjust or unreasonable discrimination or give any undue or unreasonable preference or prejudice to any person, class of persons, or locality, within the meaning of Section 202(a) of the Act;

(3) Whether the aforesaid tariffs conform to the requirements of Section 203 of the Act and Part 61 (47 CFR Part 61) of our Rules implementing that Section;

(4) If any of such charges, classifications, practices, or regulations are found to be unlawful, whether the Commission, pursuant to Section 205 of the Act, should prescribe charges, classifications, practices, and regulations for the service governed by the tariffs, and if so, what should be prescribed.

12. IT IS FURTHER ORDERED, That, the hearing in this proceeding shall commence at the Commission offices in Washington, D.C. at a time to be specified by the presiding Administrative Law Judge; and that such Administrative Law Judge shall, upon the closing of the record, prepare an initial decision which shall be subject to the submittal of exceptions and requests for oral argument as provided in 47 C.F.R. 1.276 and 1.277, after which the Commission shall issue its decision as provided in 47 C.F.R. 1.282 and that the trial staff of the Common Carrier Bureau be separated both from the Commission and from the Administrative Law Judge;

13. IT IS FURTHER ORDERED, That, the Petitions For Suspension and Investigation and For Rejection or Suspension ARE GRANTED to the extent noted herein and otherwise DENIED.

14. IT IS FURTHER ORDERED, That, The Western Union Telegraph Company is named Party Respondent.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

SEPARATE STATEMENT OF CHAIRMAN DEAN BURCH IN WHICH COMMISSIONERS ROBERT E. LEE, H. REX LEE, REID, WILEY AND HOOKS JOIN

The staff understandably resists the separation procedures imposed herein essentially on grounds of economics and ease of administration. These arguments are valid to a certain extent and the Commission, fully cognizant of its budgetary constraints, will attempt to deal with the budgetary problems, forthwith.

On the other hand, when due process and ease of administration are in conflict, the latter will simply have to take a back seat.

OPINION OF COMMISSIONER NICHOLAS JOHNSON, CONCURRING IN PART AND DISSENTING IN PART

Today the Commission sets for hearing significant increases in the prices of Western Union's TWX and Telex teleprinter exchange services. I concur in the majority's action insofar as it sets up a separate Trial Staff to participate in this case and advocate the public interest.

The Commission in recent actions has come to the view that there should be a separated Trial Staff in common carrier proceedings. It is a view I have held for some time. Most of the discussion that has led to this change has evinced concern that it is not fair to a common carrier like Bell or Western Union for the Commission's Common Carrier Bureau staff to participate in a hearing, supposedly not as advocates, and then try to objectively advise the Commissioners *in camera* on the final decision in the case. I do not believe common carriers lack for opportunity to present their views to the Commissioners, nor do I believe our staff is unfair in the way it advises the Commission, nonetheless I support this increased measure of insuring fairness. As a matter of law it seems well settled that the Commission is not required to separate its Common Carrier Bureau staff in these ratemaking/rulemaking proceedings. And I agree with the Chairman's statement in this case which points out the serious budget implications of using separated staffs. We simply must have more resources for common carrier regulation. We are not doing our job now.

But my support for separation of a Trial Staff rests on a premise in addition to that of fairness. I believe it is important for the Commission to have a Trial Staff which feels no inhibition in advocating the consumer or public interest in these cases. I believe we get better advocacy when our staff is separated, we make better decisions, and the public is better protected. But apparently some carriers are having second thoughts about the benefits of Trial Staff separation. Bell apparently likes the fairness aspects, but doesn't like the vigor of Trial Staff public interest advocacy, and would like the Commission to rein in its Trial Staff. I hope the majority has no intention of giving the carriers all the benefits of this new fairness, while at the same time taking away from the public the benefits of improved consumer advocacy. It is a situation that will bear watching, and I hope our staff reports any efforts to crimp the performance of their important duties in these proceedings.

I cannot join the majority in the rest of its order on these Western Union price increases. This is the fourth increase in Telex rates in six years. The rate of increase is about 10% this time.

Competition between TWX and Telex was eliminated when the Commission permitted Western Union to buy TWX from Bell. Western Union estimates a pre-tax earnings of 19.2% on Telex in 1972 and 18% in 1973 with these increases. The earnings for TWX will be 7.8% in 1972 and 12.3% in 1973. Yet the majority does not use its full suspension power, which it believes to be a 90-day suspension, and instead suspends for only one day. In addition there are serious questions

of the pricing and cost allocation procedures to be used in evaluating whether these prices are lawful. These issues depend to some extent on decisions the Commission must make in other proceedings. As I have said before, I would suspend for as long as it takes to litigate the public interest issues any significant tariff changes by common carriers, particularly where those issues depend upon decisions in proceeedings that have been going for so many years here. I believe the Commission has the power to enter such a suspension order. Until the Commission makes decisions in these long-delayed proceedings, and has some guidelines by which to test major tariff changes, I believe we have no other course.

There is another reason why the majority should have entered a longer suspension order in these price increases. If anyone is interested in what the differences are between Phase II and Phase III of President Nixon's inflation control policies, here is a good example. Under the rules of Phase II, this Commission would have been compelled to suspend the price increases for at least 90 days, and perhaps for the full period of time needed to litigate the issues in this investigation. Under Phase III the 10% price increases go into effect with a one day suspension, and I detect no great interest in whatever review structure is left in Phase III to review what the Commission has done here.

Things are back to normal.

F.C.C. 73-234

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF THE COMMISSION'S RULES AND REGULATIONS TO PROVIDE FOR THE LICENSING OF AUDITORY TRAINING DEVICES FOR THE PARTIALLY DEAF IN THE BANDS 72–73 AND 75.4–76 MHz.	Docket No. 19185 RM-1752

MEMORANDUM OPINION AND ORDER

(Adopted March 2, 1973; Released March 8, 1973)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT; COMMISSIONER WILEY NOT PARTICIPATING.

1. A Report and Order in this proceeding was adopted on July 6, 1972, and released on July 11, 1972, (35 FCC 2nd 677–691; 37 FR 13984). This report promulgated regulations for the operation of wireless auditory training systems (used for the education of deaf and partially deaf children) without individual license under Part 15 of the FCC Rules. The regulations listed 28 channels, each 50 kHz wide, in the bands 72–73 MHz and 75.4–76 MHz, with provision to operate wide band equipment (200 kHz wide) on certain of these channels. The regulations also set out technical specifications for the receiver portion and the transmitter portion of the auditory training system.

2. Three petitions for reconsideration of the Report and Order have been received. One petition filed on August 10, 1972, by HC Electronics, Inc. (hereafter HC), deals largely with the question of frequency and asks the Commission to reverse its original decision and to permit the use of higher power in the FM broadcast band, 88–108 MHz for wireless microphones which are used in wireless auditory training systems. In addition, HC requests that the technical standards adopted in our July 6, 1972 Order be relaxed. On February 7, 1973, HC submitted a supplement to its petition for reconsideration withdrawing its request for relation of certain of these standards. This request is discussed in paragraphs 20 to 26 below.

3. Electronic Futures, Inc. (hereinafter EFI), filed a petition for reconsideration on September 18, 1972. This petition addresses itself to two of the technical standards proposed: receiver image rejection and receiver selectivity and desensitization. EFI requests the Commission to reduce the requirement for each of these characteristics from 60 dB to 40 dB.

4. The Oticon Corporation, a Danish company that manufactures hearing aids and associated equipment which it markets in the USA through a US subsidiary, filed a petition on November 6, 1972, requesting the Commission to reduce the receiver image rejection and

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receiver selectivity and desensitization from 60 dB to 40 dB. The petition also asks for a special regulation for receivers using so low an IF that the image frequency falls within the band of frequencies made available for auditory training devices. For such a receiver, Oticon requests that the image frequency suppression requirement be deleted and the permitted level of oscillator radiation from such receiver be increased.

5. In its petition, HC discusses a number of aspects of the Commission's Report and Order, but addresses itself basically to the relative merits of the 88–108 MHz band for auditory training systems. Primarily HC contends that inadequate consideration had been given to its argument in favor of higher power operation in the 88–108 MHz. Noting that the Commission had conceded the need for higher powered operation, HC reiterates its original argument that such higher power can be achieved in the FM broadcast band (88–108 MHz) without causing harmful interference to that service. HC bases this contention on the fact that no complaints of interference had been received, even with respect to those high power wireless microphones that had been authorized under waivers of § 15.212 granted during June–September 1971.[1]

THE USE OF THE FM BROADCASTING BAND (88–108 MHZ)

6. The FM broadcasting service in the band 88–108 MHz was established to provide a high quality aural broadcasting service. Wide channels (200 kHz) were provided to permit the transmission of high fidelity aural programs with negligible interference. In keeping with our policy of utilizing the radio spectrum in the most efficient manner, wireless microphones and telemetering devices were authorized to operate in the FM broadcast band but only under severe restrictions designed to insure that these devices could not cause interference to the FM broadcasting service. HC's request for higher power for its wireless microphone sought to ease these restrictions. The Commission did not find that HC's proposal was in the public interest, insofar as it sought higher power in the 88–108 MHz band.

7. We indicated in our Report of July 6, 1972, that we were persuaded by the arguments presented in HC's petition that higher power was required for wireless microphones used as auditory training devices. But we were not at all persuaded that such devices must operate in the 88–108 MHz band. The device described by HC can be developed and used successfully on almost any frequency in the VHF spectrum and even higher. (One need merely look at the variety of low power devices operating on the various land mobile frequencies, at the biomedical telemetry devices operating on frequencies between 100 and 200 MHz,[2] at radio controls for door openers between 220 and 400

[1] Section 15.212 provides that wireless microphones in the band 88–108 MHz shall operate with a maximum radiated field strength of 50 uV/m at 50 feet. Between June and September 1971, some 80 schools were authorized to operate the noncomplying HC wireless microphone model 221–T with a radiation level of some 3000–5000 uV/m at 50 feet. See #7 of the Report and Order in this proceeding. The schools given this authorization may continue to operate the noncomplying devices until January 1982, and may repair and replace units. (47 C.F.R. § 15.335(b).)

[2] In a rule making proceeding in Docket No. 19231, the Commission made available under Part 15, frequencies between 174 and 216 MHz for bio-medical telemetering devices operating with a field strength of 150 microvolts per meter at 100 feet.

MHz). Thus, the problem confronting the Commission in seeking to satisfy the need for higher power for the transmitter part of the auditory training system was where in the spectrum to locate these devices. In our study of this problem, we set ourselves the following objectives:

—To minimize the changes that a manufacturer would have to make in his existing designs.
—To minimize cost increases that might arise from a requirement that these devices operate in the higher reaches of the spectrum.
—To insure that devices furnished to schools could reasonably be expected to provide satisfactory service and have a minimum susceptibility to out of band (including adjacent channel) signals.

8. This study convinced us that to minimize redesign requirements the frequencies provided should be as close to 88–108 MHz as possible and should not be much above 300 MHz or much below 50 MHz. It was further decided not to increase the risk of interference to the FM broadcasting service by authorizing relatively high power operation in that band. (See discussion in Paragraphs 11 and 12 below). At the same time, by keeping wireless auditory training systems out of the FM band 88–108 MHz, we eliminate the possibility that these systems will be subject to destructive interference from on-channel (or adjacent channel) FM broadcasting stations. We concluded that the most reasonable available location in the spectrum for wireless auditory training systems was in the band 72–76 MHz. This band is currently used for a variety of low power operations (See paragraphs 37–38 of Report and Order) with a very low interference potential to wireless auditory training systems in schools and vice versa.

9. To minimize susceptibility to adjacent channel and other undesired signals, we imposed a requirement on the desensitization and adjacent channel selectivity characteristics and for image rejection of the receiver. We also imposed frequency stability requirements on the transmitter and receiver used in the auditory training system.

THE PROBLEM OF AVOIDING INTERFERENCE

10. HC bases its argument for higher power in the 88–108 MHz band on the fact that present operation of wireless microphones in this band, even with high power,[3] has not resulted in any complaints of interference. HC's position appears to be that the Commission should wait for interference to develop and then take corrective measures. The Commission has taken precisely the opposite position.

11. The Commission's responsibility is to anticipate interference and to promulgate rules to avoid its occurrence.[4] In line with this responsibility, we are in the process of tightening observance of technical standards by establishing more elaborate and more rigorous equipment authorization procedures.[5] We have already adopted mar-

[3] See note 1 *supra*.
[4] Congress appears to have the same preference for the preventive approach in this area of regulation. Public Law 90–379 (adopted July 5, 1968), which added § 302 to the Communications Act, was justified on the basis that it was more effective to prevent interference than to correct it.
[5] Docket No. 19356: In the matter of amendment of Parts 0 and 2 of the rules relating to equipment authorization of RF devices. Notice of Proposed Rule Making adopted November 24, 1971. (36 FR 23313.)

keting regulations [6] designed to keep interference-capable equipment out of the hands of the public.

12. HC points out also that not a single FM broadcaster had objected to its proposal to use higher power in the 88–108 MHz band; HC implies that, in the absence of such objection, the Commission should authorize higher power operation. But there was no reason for FM broadcasters to object in this rule making. The Notice proposed higher power operations only in the 72–76 MHz band—not in the FM band. The failure of FM licensees to object, then, does not indicate acquiescence in the HC proposal.

13. In looking at this situation, the Commission concluded that the growth in the use of auditory training systems in the 88–108 MHz band (which could be anticipated if high power auditory training systems were permitted in that band) together with the normal growth of the FM broadcasting service could be expected to produce an interference situation that would be difficult to correct. Accordingly, it was concluded that such high power operation by auditory training systems in the FM broadcasting band (88–108 MHz) was not in the public interest. In the absence of new information or more persuasive arguments, we reaffirm our original finding in this respect.

HC'S ARGUMENT AGAINST THE USE OF THE 72–76 MHZ BAND

14. HC also questions the usefulness of the 72–76 MHz band for auditory training systems, as compared to the band 88–108 MHz. This question is argued from two points of view—the availability of an adequate number of channels and the alleged interference to be expected from the operation of channel 4 and 5 television transmitters. HC takes the position that the spectrum space made available in this proceeding between 72–76 MHz does not provide a sufficient number of channels, and cites the NAE report [7] in this proceeding which calls for a minimum of 16 channels to be provided. HC contends that the frequencies made available between 72 and 76 MHz will provide only eight channels (each 200 kHz wide). This contention is based on HC's claim that each channel must be 200 kHz wide, based on its allegations that an audio bandwidth out to 15,000 cycles is required. This allegation is not supported, however, either by the NAE or the HEW [8] reports. NAE in its report states that an audio bandwidth of 100–8000 Hz is required. HEW in its report, sets the required audio bandwidth at 100–7000 Hz.

15. We are persuaded to accept the judgment of the experts consulted by HEW and NAE. Accordingly, we reiterate our finding that a 50 kHz channel is adequate. Such a channel is easily capable of delivering a 8000 Hz audio signal with an adequate signal to noise ratio. The spectrum space we have provided, permitting 28 channels, each 50 kHz wide, thus more than meets the minimum requirement set out in the NAE report.

16. The second aspect—that of potential interference from channel 4

[6] Part 2, Subpart I (47 CFR 2.801 *et seq*).
[7] Report filed September 2, 1971, by National Engineering Academy, Subcommittee on Sensory Aids as a comment in Docket No. 19185.
[8] Report filed on December 20, 1971, by the Department of Health, Education, and Welfare, National Advisory Committee on Education of the Deaf as a comment in Docket No. 19185.

and channel 5 television transmitters—is discussed in some detail in paragraph 38 of the July 6, 1972 Report and Order. We recognized there that the potential for interference existed, but we concluded that satisfactory service could be obtained even under the worst interference conditions. We need not reiterate that discussion. We can add, however, that many of the existing operations in the band 72–76 MHz are low power mobile operations. The communications provided by these operations have been satisfactory despite the existence of high power TV transmitters on adjacent channels. On the basis of information now available to the Commission, we cannot accept HC's contention that channels 4 and 5 will produce destructive interference to auditory training systems in this band.

17. HC asserts further that the potential for interference to television reception from auditory training systems is substantial in the band. It calls attention to the Commission's pending Notice of Inquiry regarding interference to reception of TV channel 6 from noncommercial education FM stations in the band 88–92 MHz. These situations are not analogous, however. In the case of FM/TV–6 interference, we are concerned with a blanketing effect produced by an FM station operating with 10 watts or more. In the present rule making, we are dealing with auditory training system transmitters operating with a power output of the order of 20–100 milliwatts whose blanketing area is negligible when compared with that of a 10 watt transmitter. HC also calls attention to the special restrictions imposed by § 91.8(g) against operational fixed stations operating in the band 72–76 MHz. These restrictions apply to operational fixed stations operating with hundreds of watts. The restrictions imposed against these stations are designed to avoid the creation of an area in which television reception is destroyed. At the same time, we can point to the many low power operations in the band 72–76 MHz which are not subject to the restriction as to geographic location imposed by § 91.8(g).

TECHNICAL STANDARDS FOR THE TRANSMITTER

18. Of the three parties who filed for reconsideration in this proceeding,[9] only HC questioned the frequency stability for the transmitter part of the auditory training system as set out in § 15.353.[10] HC states that such a requirement is unnecessary for low power equipment. It particularly objects to the requirement that frequency stability be demonstrated over the large temperature range specified. However, HC does not indicate how much this frequency tolerance should be relaxed, or what in its opinion would constitute a suitable requirement. HC merely refers, in this connection, to the requirements in § 91.555[11] apparently suggesting that similar requirements should be applied to the transmitter part of the auditory training system.

[9] See paragraph 2, 3, and 4 of this Order.

[10] Section 15.353 provides that the transmitter part of the auditory training system shall maintain a frequency stability of +0.005% over a temperature range of 0° to 50°C and a supply voltage range of 85% to 115% of the normal supply voltage.

[11] Section 91.555 provides that a transmitter operating in the Business Radio Service with a power input that does not exceed 200 milliwatts is exempt from the general technical requirements applicable to that service provided the sum of the bandwidth occupied by the emitted signal plus the bandwidth required for frequency tolerance is confined

19. The purpose of this requirement in § 15.353 was to insure that each transmitter in the auditory training system would stay within its own channel and would not intrude into the adjacent channels. Such a requirement is essential if an adequate number of channels is to be available for auditory training systems. It is significant that no other manufacturer of such systems has questioned this requirement.[12] We remain convinced that the transmitter frequency stability requirement is a necessary element in the new auditory training systems rules. It is reaffirmed.

TECHNICAL STANDARDS FOR THE RECEIVER

20. All three petitioners for reconsideration challenge the technical standards for the receiver. EFI argues that the 60 dB requirement for adjacent channel selectivity and desensitization [13] and the 60 dB image rejection requirement [14] are excessively severe for receivers to be worn by children in auditory training systems. In support of its argument it presents extensive data showing the specifications claimed by manufacturers of a variety of receivers now on the market. In citizens band equipment, the best advertised specifications are respectively 45 dB and 42 dB. In pocket paging receivers, 60 dB is achieved but only in equipment which is designed for one frequency operation and whose front end can therefore be carefully packaged. This, EFI states, is not true for auditory training receivers, which have to be designed for multiple channel operation. EFI also presents data for conventional FM receivers which achieve 70 dB alternate channel selectivity and 90 dB image rejection, and points out that, despite the unlimited size permitted, no manufacturer offers receivers capable of adjacent channel operation.

21. EFI contends that requirements of 60 dB are not necessary for auditory training receivers and asserts that a standard of 40 dB is adequate to protect adjacent channel operation under the conditions that normally prevail in the classroom. This opinion is supported by statements from Mr. Chapin C. Cutler,[15] Bell Telephone Labs and Dr. Peter Kindleman,[16] Yale University.

22. The Oticon Corporation also contends that the 60 dB specification is excessive and will increase excessively the cost of the auditory training receiver. Oticon agrees that a specification of 40 dB for adjacent channel selectivity and image rejection is adequate.

23. Oticon proposes a different approach to the problem of image frequency. It suggests that the IF be sufficiently low so that the image frequency falls within the bands allocated. Oticon argues that this ap-

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within a band 80 kHz wide centered on the assigned frequency with emissions outside this 80 kHz band attenuated at least 30 dB. Such transmitters must be typed accepted (§ 91.109(b)). To receive type acceptance, data must be submitted showing that the transmitter meets the above requirement over a temperature range of −30° to +50°C and a supply voltage variation of 85% to 115% of normal supply voltage.

[12] As a practical matter two transmitters for use in auditory training systems in the 72–76 MHz band have already been type approved under these standards. These are listed in FCC Bulletin OCE 32.

[13] Section 15.363 specifies that the receiver shall provide 60 dB adjacent channel selectivity and desensitization.

[14] Section 15.365 specifies that the receiver shall provide 60 dB image frequency rejection.

[15] Exhibit D to EFI petition for reconsideration. Mr. Cutler is Director of Electronic and Computer Systems Research Laboratory at Bell Telephone Laboratories, Holmdel, N.J.

[16] Exhibit E to EFI petition for reconsideration. Dr. Kindlman is Director of the Engineering and Applied Sciences Electronic Laboratory of the Durham Laboratory at Yale University, New Haven, Conn.

proach will obsolete the image frequency rejection requirement since no disturbance (interference) from other services will be possible. Moreover, Oticon points out that this approach will permit each receiver to be served by two transmitters, although it does not elaborate on this theme and explain how this arrangement would benefit the auditory training system. Oticon does point up one apparent defect in using a low IF which brings the local oscillator frequency close to the signal frequency. In such an arrangement, the front end circuitry is no longer available to suppress oscillator energy from reaching the antenna and being radiated. Being close to the desired signal frequency, the front end circuits will readily pass and not discriminate against the local oscillator energy. It would, therefore, be necessary to raise the permitted level of oscillator radiation for a receiver using such a low IF.

24. HC asserts that the requirement for frequency stability of the receiver [17] is unrealistic, is unnecessary, and that no similar requirement is found elsewhere in the Commission's rules.[18]

25. The Commission has reviewed the several arguments against our present technical standards for the auditory training receiver. We are persuaded that we can reduce our requirement for adjacent channel selectivity and desensitization and for image frequency rejection from 60 dB to 40 dB without seriously compromising the desired performance of these receivers. We are amending our rules accordingly. While we see some merit in Oticon's proposal to use a low IF, we do not see how these benefits overcome the undesirable side result of increased oscillator radiation. Accordingly, we cannot agree to Oticon's second request for an increase in oscillator radiation. This does not mean that we will object to the use of a low IF. On the contrary, Oticon is free to use any IF it finds desirable and convenient, provided, that its receivers meet our 40 dB requirement for image frequency rejection and our requirements for oscillator radiation.

26. We cannot agree with HC that our proposal for frequency stability is unrealistic. As to HC's argument that such receiver standards are not found elsewhere in the Commission's rules, we can point out that our frequency allocations and our channeling arrangements in all services have always taken into account the performance of the receiver to be used.[19] These standards were always discussed in the order making the change in the allocations or in the channeling arrangement, but it is true that they were never specifically stated in our regulations. In the past several years we have been importuned to set our these receiver specifications in the rules. Actually, this is the second proceeding in

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[17] Section 15.361 specifies that the receiver frequency stability shall be ±0.005% over the temperature range 0°–50°C and a supply voltage variation of 85% to 115%.

[18] In its petition for reconsideration filed August 10, 1972, HC had, in addition requested reconsideration of the requirement imposed by §§ 15.363 and 15.365, claiming that the 60 dB requirement for image rejection and for adjacent channel selectivity and sensitivity, were also unrealistic. The request for reconsideration of the requirements in §§ 15.363 and 15.365 was withdrawn by HC's supplement filed February 7, 1973, on the grounds that it had determined that these standards are attainable in circuity manufactured on an assembly line. HC points out in this connection that its recently certificated receiver model 421–R which operates in the band 88–108 MHz and is not required to comply with §§ 15.363 and 15.365, does in fact meet the 60 dB standard imposed by these regulations.

[19] An outstanding example is the frequency assignment plan for the UHF television channels which is based on a number of taboos to account for the performance of UHF television receivers.

which receiver specifications have been set out in our rules.[20] It is our intention to do so in all future proceedings which involve changes in channeling designed to take account of improved receiver characteristics. We reaffirm the receiver frequency stability requirements.

MEASUREMENT PROCEDURE

27. The question of measurement procedure to be used in measuring the radiated field from the transmitter part of an auditory training system was not raised in the petitions for reconsideration. Since we have experienced enforcement problems due to difference in measurement procedures,[21] we are taking this opportunity to clarify the procedures. The clarification requires the addition of a new Section 15.377 to Subpart G of Part 15, but it does not change the substantive restrictions on field strength.

28. Measurement of the radiated field from the transmitter part of the auditory training system when worn on the body or held in the hand is not satisfactory since the results vary according to how the device is worn or carried. To yield more consistent results, a standard procedure has been developed in which the device is measured in a test set-up—a wooden support in an open field.[22] Using such a test set-up presents a problem since our experience derived during measurements for type approval show that radiation in a test set up is not the same as when the device is worn on the body or carried in the hand. The difference in any one case is unpredictable. On the average, however, there is some reduction. The practical effect is that a device designed to meet the required field strength limit under standard test conditions, on the average, may operate below the allowable limit in normal use. Thus, on the average, the standard test procedure may impose a stricter limit on the device than the Commission has intended.

29. With a view toward retaining the standard test procedure and, at the same time, insuring that it does not impose a stricter limit than the regulations intended, the test procedure heretofore used is being revised to incorporate a factor to take into account the average difference between radiation under standard test conditions and that in normal use. The factor to be used is 4 dB and deflects the experience of our Laboratory in making these measurements. The revised Bulletin incorporating this correction factor is expected to be issued in March 1973.

CONCLUSION

30. As explained above, we do not find it in the public interest to permit the high power sought by petitioner in the band 88–108 MHz—

[20] See § 83.715 of the rules adopted for Bridge-to-Bridge communications in the Maritime Mobile Service. Docket No. 19343, adopted May 24, 1972 (37 FR 11245).

[21] This question was raised in connection with two petitions filed on September 22, 1972, by HC Electronics, Inc., asking the Commission to take remedial action against EFI for marketing wireless microphones that allegedly were in violation of the Commission's Rules. The Commission's investigation of HC's allegations revealed that some of these devices were tested for type approval under a procedure different from the published statement of the measurement procedure. The Commission dismissed HC's petitions on January 23, 1973, after obtaining commitments from EFI to bring its microphones into compliance. *Memorandum Opinion and Order*, 39 F.C.C. 2d ——. In a footnote to the dismissal order, the Commission said that it would address this question in connection with petitions for reconsideration of the auditory training systems rules.

[22] Bulletin OCE 19, published in January 1969, sets forth the test procedure that has been employed by the Commission's Laboratory Division. The Division also has taken measurements under conditions of normal use.

the FM broadcasting band, and we reaffirm our earlier determination that such high power operation shall be permitted in the band 72–76 MHz. We reaffirm also our earlier determination to divide the frequency space in the 72–76 MHz band into channels 50 kHz wide, with provision for using 200 kHz channels in special circumstances. We are persuaded by the arguments presented and have relaxed our technical specifications for receivers from 60 dB to 40 dB for adjacent channel selectivity and desensitization and for image frequency rejection requirements. We deny the requests for relaxation of other receiver specifications and of the transmitter specification. Finally, we clarify the measurement procedure for determining compliance with field strength limits.

31. Accordingly, IT IS ORDERED, effective April 16, 1973, that Part 15 is amended as set out in the Appendix to this Order. Authority for these amendments is contained in §§ 4(i), 302, 303(c), (g) and (r) of the Communications Act of 1934, as amended. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 15 of the Commissions Rules is amended as follows:

1. **Section 15.363 is amended to read as follows:**

"§ 15.363 Receiver selectivity and desensitization (72–76 MHz)

A receiver operating as part of an auditory training system in the band 72–76 MHz shall provide a minimum of 40 dB adjacent channel selectivity and desensitization when measured in accordance with the procedure specified in EIA Standard RC–204 dated January 1958, or equivalent procedure. (See IEEE Standard 184. April 1969)."

2. **Section 15.365 and headnote are amended to read as follows:**

"§ 15.365 Receiver image frequency rejection (72–76 MHz)

A receiver operating as part of an auditory training system in the band 72–76 MHz shall provide a minimum of 40 dB image frequency rejection when measured in accordance with the procedure specified in EIA Standard RS–204 dated January 1958, or equivalent procedure. (See IEEE Standard 184, April, 1969)."

3. **A new Section 15.377 is added to read as follows:**

"§ 15.377 Measurement of Field Strength

Measurement of radiated field strength of all emissions (fundamental, harmonics and other spurious) from the transmitter parts of auditory training systems, operating in the 72–76 MHz band or in the 88–108 MHz band, shall be made in accordance with the procedure set forth in FCC Bulletin OCE 19, published March 1973."

F.C.C. 73-231

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
MIKE BRAMBLE, DUBUQUE, IOWA
Concerning Station KBUN

MARCH 2, 1973.

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

Mr. MIKE BRAMBLE, *593 Arlington, Dubuque, Iowa.*

DEAR MR. BRAMBLE: This is in reference to your letter, dated October 24, 1972, to the Minnesota Human Rights Department, a copy of which you sent to Commissioner Nicholas Johnson.

In your letter you alleged, among other things, that the manager of station KBUN forbade you to broadcast news items offensive to station advertisers because the manager feared withdrawal of advertising accounts and that as a result of one newscast and complaints of advertisers your employment at station KBUN was terminated.

As you know, the Commission has made an investigation of your allegations.

The licensee is responsible for his programming and therefore has not only the right but the obligation to acquaint himself with what is being or will be presented; the licensee may not, however, use his facilities to promote his private rather than the public interest, and refusal to broadcast material—which otherwise would be broadcast—because of pressure from an advertiser is an obvious example of subordinating public to private interest.

On the basis of the Commission's investigation of this case, however, it cannot be determined that the licensee did subordinate public to private interest, or that your employment was terminated because you broadcast a news item critical of a local advertiser rather than because you refused to follow station policy, left the station without notice or explanation, and thereafter refused to discuss the matter with the manager of the station.

Commissioner Johnson dissenting.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-247

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request of CITIZENS COMMUNICATION CENTER For Extension of Time To File Petition To Deny Renewal of License for Station WRAG, Carrollton, Ala., on Behalf of Pickens County NAACP	BR-2646

MARCH 2, 1973.

ALBERT H. KRAMER, Esq.,
Citizens Communications Center,
1812 N Street,
Washington, D.C.

DEAR MR. KRAMER: This is in reference to your letter of February 26, 1973, on behalf of the Pickens County Chapter of the National Association for the Advancement of Colored People, whereby you request an extension of time to March 12, 1973, to file a petition to deny the application for renewal of license for Radio Station WRAG, Carrollton, Alabama (BR-2646). Pickens County Broadcasting Co., Inc., licensee of WRAG, has not objected to this request.

Section 1.580(i) of the Commission's Rules and Regulations provides, in substance, that a petition to deny a renewal application must be filed on or before the first day of the last full month of the station's license term. The license for WRAG expires on April 1, 1973. Accordingly, a timely petition to deny was due on March 1, 1973. Absent good cause shown, the Commission will not grant a waiver of Section 1.580(i) to authorize the filing of a petition after that date. See, e.g., *WSM, Incorporated*, 24 FCC 2d 561 (1970), and *Trumball County N.A.A.C.P.*, 25 FCC 2d 827 (1970).

In support of your request for an extension of time you state that the N.A.A.C.P., having already monitored the station and transcribed the results of the monitoring, sent Rev. James H. Corder, President of the group, to the WRAG offices on February 22 and 23, 1973, to inspect a copy of the aforementioned renewal application; that, in violation of Section 1.526 of the rules, the application was not available for inspection on either occasion; and that on Sunday, February 25, the general manager of the station arranged to meet with Rev. Corder on February 26 (the date of the instant request), but that it was not clear whether the application would be available for inspection at that time. As a result of the station's failure to make the application available, you state that the N.A.A.C.P. could not possibly meet the March 1 filing deadline, and that, since counsel had allotted certain days for work on the preparation of the WRAG petition, other com-

mitments would prevent counsel from affording adequate legal assistance unless an extension is granted.

In view of the foregoing, we believe that you have demonstrated good cause for waiver of Section 1.580(i) of our rules. Accordingly, the time for filing a petition to deny by the Pickens County Chapter of the N.A.A.C.P. against WRAG, Carrollton, Alabama, is extended to March 12, 1973.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-236

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Objections by CITIZENS FOR PROGRESSIVE RADIO IN BAY COUNTY TO ASSIGNMENT OF LICENSE OF STATION WMAI-FM, PANAMA CITY, FLA.	BALH-1734

MARCH 2, 1973.

MR. RAY MCCAY, Jr.,
Chairman, Citizens for Progressive Radio in Bay County, Post Office Box 7133, Laguna Beach Station, Panama City, Fla.

DEAR MR. MCCAY: This refers to the application for assignment of the license of Station WMAI-FM, Panama City, Florida from Mus-Air, Inc., to Bay County Broadcasting Company, Inc. (BALH-1734). This also refers to the informal objections filed on October 24, 1972 by the Citizens for Progressive Radio in Bay County (hereinafter, "Citizens"), objecting to a proposed change in format.

WMAI-FM presently broadcasts a progressive rock format. In view of continuing financial losses incurred under this format, and in view further of availability of Top-40 Rock formats over two other Panama City area stations, Bay County Broadcasting has determined that the public interest would best be served by changing the station's format. Citizen's contentions are: (a) that the format change is not responsive to needs and interests in Panama City (principally, interests of the area youth) and music broadcast by other area stations will not fill the void resulting from the format change, and (b) community interests and needs were not accurately determined by assignee's survey.

The Commission noted that on November 7, 1972, shortly after your objections were filed, assignee substantially amended its format proposals. The amendment resulted from listener preference surveys conducted by assignee in the Bay County area, which surveys covered (a) members of the general listening public, and (b) members of the area student population. In view of the sustained student interest in progressive rock disclosed by surveys of the student group, and in an effort to achieve a compromise format, assignee has determined a five-hour segment of progressive rock (from 9 p.m. to 2 a.m., daily) will be retained by WMAI-FM. Thus, over 20% of the broadcast day will be devoted to progressive rock.

The Commission further noted that on November 24, 1972, Bay County Broadcasting responded to your objections. That reesponse (which was served on you) outlined the November 7th format amendment and set forth the reasons why Bay County believed the Citizens objections were without merit. Since filing of assignee's program

format amendment and response, there has been no further objection or reply from Citizens.

The Commission has repeatedly held that decisions respecting proposed formats are left to the good faith judgment of the applicants, and where—as here—a station has sustained continuing losses under a particular format and other area stations will continue to provide a similar format to listeners, the Commission has declined to interfere with a proposed assignee's judgment that a format change would be in the public interest. See *WTOS-FM, Inc.*, 21 RR 2d 146 and *Twin States Broadcasting, Inc.*, 24 RR 2d 767.

On the basis of all the information before it, including your informal objection, the Commission determined that a grant of the application would serve the public interest; and on March 2, 1973, it granted the application.

In view of these considerations, the informal objections of Citizens for Progressive Radio in Bay County were dismissed.

Commissioner Johnson dissenting.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73-266

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re complaint of
CLUB PALMACH RIFLE AND PISTOL CLUB, INC.
against
NATIONAL BROADCASTING CO.
and
COLUMBIA BROADCASTING CO.

ORDER

(Adopted March 7, 1973; Released March 12, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has before it an Application for Review filed on February 8, 1973 by Club Palmach Rifle and Pistol Club, Inc., of the ruling of the Broadcast Bureau of January 15, 1973.

2. We have examined the pleadings herein and believe that the Bureau's ruling was correct. Accordingly, pursuant to Section 1.115(g) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-250

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTION 0.311 OF THE COMMISSION'S RULES RELATING TO AUTHORITY DELEGATED TO CHIEF, FIELD ENGINEERING BUREAU

ORDER

(Adopted March 7, 1973; Released March 12, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. Alien pilots and flight crewmembers continuously seek waivers of the citizenship requirements of Section 303(1) of the Communications Act and the geographic restriction requirements of Section 13.4(c) of the Rules in order to obtain restricted radiotelephone operator permits. Pursuant to Section 13.11(c) such applications must be signed by individual applicants.

2. Foreign airlines have recently begun to submit applications on behalf of their pilots for whom waiver of the Rules are sought and restricted permits requested. In each instance the appropriate form and fee is submitted for each individual named and an assurance made that the named permittee will sign the permit individually immediately upon receipt. The permit in any event is not valid until so signed.

3. The Chief and Deputy Chief, Field Engineering Bureau, are delegated the authority to grant the waiver requests of Section 303(1) of the Act and Section 13.4(c) of the Rules, pursuant to Section 0.311 (a)(9) and (11) of the Rules.

4. The Commission believes that an extension of this delegated authority to permit the granting of waiver of the individual applicant's signature requirement of Section 13.11(c) by the Chief and Deputy Chief, Field Engineering Bureau, would support the handling of the existing delegation and assist in the orderly and expeditious handling of the Commission business.

5. This amendment relates to the internal Commission organization, and hence, the prior notice, procedure, and effective date provisions of the Administrative Procedure Act are not applicable. Authority for the promulgation of these amendments is contained in Section 4(i) and 5(b) and (d) of the Communications Act of 1934, as amended.

6. Accordingly, IT IS ORDERED, effective March 21, 1973, that § 0.311(a) of the Rules IS AMENDED by deleting subparagraph (10) (presently Reserved) and substituting the following new § 0.311 (a)(10):

§ 0.311 *Authority delegated to the Chief and to the Deputy Chief of the Field Engineering Bureau*

(a) * * *

(10) To act on requests for waiver of the individual signature requirement in § 13.11(c) of this chapter on applications for commercial operator permits and licenses.

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FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

39 F.C.C. 2d

109-031—73——2

F.C.C. 73-229

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
KENNETH M. COOPER, DRIGGS, IDAHO
For Review Concerning Complaint Re
Station KID, Idaho Falls, Idaho

MARCH 2, 1973.

AIR MAIL
MR. KENNETH M. COOPER,
Box 111,
Driggs, Idaho

DEAR MR. COOPER: This refers to your Application for Review of what you term a "letter action" of the Broadcast Bureau regarding your complaint against Station KID, Idaho Falls, Idaho.[1]

In your complaint and subsequent pleadings you assert in substance that: (1) KID and CBS, whose newscasts it carries, have presented copious news, discussion and commentary on the United States involvement in Indochina, including interviews with "numerous Senators, Representatives, cabinet members and other public figures domestic and foreign regarding their views on our activity in Indochina"; (2) although KID has carried detailed information on a daily basis regarding the American involvement in Vietnam, it has failed to give you full news reports on what you call "the other side of the Indochina conflict," and in order for you to function as an informed citizen, you request that the Commission direct the licensee to "give me a full report on this *other side* . . . bringing me up-to-date on the Russian and Chinese participation, their motives and goals, covering all of the angles that you [KID] do with regard to American involvement; what they supply and how, the cost of the war to a Russian or Chinese family, how aware people are in this countries of their war participation, what effect the war has had on their domestic economy and politics, what share is paid by the people of Poland, Czechoslovakia and other Communist countries and all other facts of their support of the North Vietnamese"; (3) KID also must "provide me with a historical report in the course of the next several months that will bring me up to a current basis" on the matters detailed above; (4) your complaint is in no way based upon alleged violation of the fairness doctrine, as the staff construed it to be in responding to your second letter; (5) you do not allege slanting or distortion of news and do not question the "licensee's motive or bona fides"; (6) although KID forwarded a

[1] The pleadings in this case are as follows: Letter of complaint to the Commission dated February 12, 1972, enclosing a prior letter of complaint to KID; staff response sent to complainant February 18, 1972; second letter from complainant dated August 4, 1972; staff response thereto dated August 21, 1972; Application for Review of staff "letter action" filed September 12, 1972; Opposition to Application for Review filed by KID October 4, 1972; Reply to Opposition filed by complainant October 11, 1972.

copy of your original letter to CBS, since CBS news programs were named therein, and you have sent CBS a copy of your Application for Review, you have received no response from CBS.

You also assert that "the propriety and indeed the necessity of honoring" your request "were essentially ruled on in advance by the Supreme Court in the *Red Lion* case" (*Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367). In support of your contentions you also cite, *inter alia*, *Banzhaf v. FCC*, 405 F 2d 1082; *Brandywine-Main Line Radio, Inc.*, 24 FCC 2d 18; *Friends of the Earth*, 24 FCC 2d 743, and *Committee for Fair Broadcasting*, 25 FCC 2d, 283.

In its Opposition to Application for Review the licensee states that it has dealt more fully with all relevant aspects of the Vietnam war than any other station in its city; that news programming is a matter of licensee responsibility and discretion; that you concede that you are not raising a fairness doctrine matter; that, rather, "applicant is substituting his judgment on the content of KID news programming for that of the licensee" and requesting the Commission to "undertake to superimpose its new judgment over that of the licensee' by making a judgment "as to what was presented as against what should have been presented," and that the Commission has stated that this is "a judgmental area for broadcasting journalism which the Commission must eschew," citing *Hunger in America*, 20 FCC 2d, 143 (1969).

The petitioner here expressly disclaims any allegation of violation of the fairness doctrine or "slanting or distortion" of news. Stripped of its verbiage then, petitioner's request is that the Commission direct a licensee to present the particular news which petitioner asserts he wants to hear on a particular station.

This we decline to do for reasons previously set forth in related areas. See, for example, *Letter to ABC, et al.*, 16 FCC 2d 650 (1969); *Hunger in America, supra; Letter to Mrs. J. R. Paul*, 26 FCC 2d 591 (1969). The complaints against the networks in *Letter to ABC* were in part similar to petitioner's here, e.g., that the networks had presented one kind of news in covering the 1968 Democratic National Convention and had failed to present other kinds which complainants believed should have been presented. As we stated in that case at p. 654,

> The general rule is that we do not sit to review the broadcaster's news judgment, the quality of his news and public affairs reporting, or his taste. The exceptions involve the "fairness," "equal opportunity," and "personal attack" doctrines—designed not to affect what is presented, or to stifle the presentation of views, but rather to encourage a full, free and fair discussion. We have also investigated allegations such as willful distortion or the self-serving use of the airwaves to promote the licensee's private interests.

We stated further, pp. 655–56:

> However, the Commission has never examined news coverage as a censor might to determine whether it is fair in presenting the "truth" of an event as the Commission might see it. The question whether a news medium has been fair in covering a news event would turn on an evaluation of such matters as what occurred, what facts did the news medium have in its possession, what other facts should it reasonably have obtained, what did it actually report, etc. For example, on the issue whether the networks "fairly" depicted the demonstrators' provocation which led to the police reaction, the Commission would be required to seek to ascertain first the "truth" of the situation—what actually occurred; next what

facts and film footage the networks possessed on the matter; what other facts and film footage they "fairly" and reasonably should have obtained . . . .

However appropriate such inquiries might be for critics or students of the mass media, they are not appropriate for this Government licensing agency . . . .

Aside from unusual situations of the kinds cited herein, it is not the proper concern of this Commission why a licensee presented a particular film segment or failed to present some other segment. Such choices are not reviewable by this agency.

Accordingly, in light of the facts before us we shall not treat further such complaints as that the networks switched away from the podium to an undue extent or that they sought to "spread rumors" regarding a Kennedy draft. These are matters for the journalistic judgment of the networks . . . Similarly, we do not consider further whether the presentation of the demonstrations broadcast was unfair, in the sense of considering which portions of the film were shown and which were not . . .

Petitioner has sought to evade the clear import of our prior rulings by claiming that his plea is based on "the public's right to adequate news coverage." The Commission indeed considers news coverage and discussion of public issues as among the most important elements of a licensee's obligation to serve the public interest. Petitioner concedes that Station KID has given extensive coverage to the Indochina war and in a manner consistent with the fairness doctrine, yet demands that the Commission substitute its news judgment for that of the licensee and the network whose programs constitute a part of its broadcasts, by requiring that some additional particular news information be presented concerning the war.

Were the Commission to adopt the position here urged upon it, it would upon complaint be compelled to review the coverage by more than 8,000 broadcasting stations of every news event cited by complainants; to determine whether the coverage of the event accorded with the notions of each complainant, and, if not, whether the licensee was "at fault." Such an approach, cut loose as it is from the fairness doctrine, has no permissible standard under either the Constitution or the Communications Act. Any attempt to evaluate such complaints as to "what should have been broadcast" as against, or in addition to, what had been broadcast would place this agency in the role of national arbiter of the news; in fact, dictator of which news items should be broadcast. Since there are only so many hours in the broadcast day and most listeners seem to desire other programming in addition to news (e.g., music, drama), it obviously is impossible for each licensee to present as much news about every event as every member of the public might desire. Thus, licensees and networks must exercise their journalistic judgment on what news is of greatest significance and interest to the public generally. With the exception of certain limited circumstances not here involved, the Commission will not intervene in any manner in the selection and presentation of broadcast news. For this, the Government licensing agency, to do so would be inconsistent with the provisions of the First Amendment.

Finally, we note that the approach suggested here has no logical stopping point and would appear to permit a complainant to require that not only his desire for particular news but his particular aesthetic needs, as well, be served (e.g., by presenting certain musical selections, dramas or ballets).

We have considered petitioner's citations of alleged precedent for his plea and we have found none of the cases apposite to his contentions.

Accordingly, the petitioner's requested relief is DENIED.

Commissioner Johnson concurring in the result.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73-278

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENTS OF PARTS 1, 2, AND 87 OF THE RULES TO PROVIDE FOR THE LICENSING AND USE OF EMERGENCY LOCATOR TRANSMITTERS (ELT's)	Docket No. 19385

REPORT AND ORDER

(Adopted March 7, 1973; Released March 13, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. On January 7, 1972, we released a Notice of Proposed Rule Making in this Docket. The Notice was published in the Federal Register on January 13, 1972 (37 FR 537). The Notice provided for the filing of comments and reply comments by specified times that have now passed.

2. For reasons described in detail in the Notice, we proposed to amend Parts 1, 2 and 87 of our rules essentially and briefly as follows:

a. to provide for licensing, testing and operation of an emergency locator transmitter (ELT) and to specify frequencies that may be assigned for ELT purposes; and

b. to include certain technical specifications for ELTs in the rules.

3. Eleven comments were received in response to the Notice of Proposed Rule Making. No reply comments were received. Listed below are the commentors, and a summary of their comments.

a. Aircraft Owners and Pilots Association, Washington, D.C., an association with 162,000 members: supports the proposed rule changes and asserts it "will enhance safety".

b. National Pilots Association, Washington, D.C., "fully agrees" with the proposed rule changes.

c. Dillingham Corporation-Marine Services (Dillingham), Honolulu, Hawaii, operator of vessels, primarily tugs and barges; states, in the interests of safety at sea, it is in favor of the proposed changes but suggests, for numerous detailed reasons, the changes be extended to include maritime services.

d. Marine Technology Division of Dayton Aircraft, Inc. (Mar Tech), Fort Lauderdale, Florida; asserts, for detailed technical reasons, that the reduced power output specified when testing an ELT with an internal test circuit cannot be met and suggests that field strength measurement in the test position be eliminated from the proposed specifications. Mar Tech states, that it conducted tests with various models of ELTs "utilizing an RF test and generating 75 mw on both frequencies with the antenna removed and the final RF amplifier output fed directly into a test light, one meter from the transmitter . . ." Under those conditions, Mar Tech reports that a radiated voltage was generated that ranged from 1,500 micro v/m on 121.5 MHz and 6,000 micro v/m on 243 MHz in the case of a small, personal, portable beacon, to 5,500 micro v/m on 121.5 MHz and 29,000 micro v/m on 243 MHz in the case of a large survival type beacon. Mar Tech also asks for authority to operate ELTs with an A3 (voice) emission.

e. Robert S. Barnes, Ann Arbor, Michigan, Civil Air Patrol Commander: supports the proposed rule changes and states that failure to adopt the changes would

have an adverse affect on search and rescue operations by removing certain aircraft from the limited types of aircraft that are available for such operations.

f. J. DeBlick, Midland, Michigan: recommends adoption of the proposed rule changes and believes a filing fee for an ELT "would be an unnecessary tax on safety".

g. Anthony M. Wojcicki, D.M.D., M.Sc.D., Nashua, New Hampshire: is an aircraft owner and supports the rule change that would eliminate a license filing fee and the operator permit requirement in case of ELT operations.

h. The Aerospace and Flight Test Radio Cooperation Council (AFTRCC): strongly supports the proposed rule changes except, for detailed reasons, believes the two frequencies proposed for use when testing ELTs will be inadequate and recommends instead that all the remaining aeronautical "utility ground control" frequencies (121.7, 121.75, 121.8, 121.85 and 121.9 MHz) also be made available for ELT testing and training. AFTRCC points out that there are too many locations where both the 121.6 and 121.65 MHz frequencies will be in simultaneous use and more flexibility is needed in order to select one of the several utility station frequencies that is relatively little used; AFTRCC believes that some provision should be made for operational testing of an ELT on the frequency 121.5 MHz since there will be many instances when FAA coordination is not practicable.

i. Experimental Aircraft Association, Hales Corners, Wisconsin: supports the proposed elimination of the license filing fee and operator permit requirements for use of an ELT.

j. Donald A. Warfle, Xenia, Ohio: supports the proposed elimination of the license filing fee and operator permit requirements for use of an ELT.

k. California Department of Aeronautics (CDA): supports the elimination of filing fee and operator permit requirements for ELTs and does not object to the use of 121.6 and 121.65 MHz for development tests and training, but asserts that the operation of ELTs on 243 MHz should be expressly authorized and authority to test ELTs not equipped with internal test circuits, on 121.5 MHz, for brief "confidence checks" should be provided, and objects to use of A3 (voice) emissions on ELTs because of resultant rapid power depletion.

In addition to the foregoing comments from the public, we have been requested by the Federal Aviation Administration (FAA) to include in any new rules adopted a provision that would permit brief operation for testing an ELT on the emergency frequency 121.5 MHz under controlled conditions. The FAA has also advised us that it concurs in the AFTRCC recommendation that all frequencies used by aeronautical utility stations be made available for assignment to ELT testing stations without interference to voice communications on those frequencies, and under FAA coordination.

4. With respect to the Dillingham comment that provisions, comparable to those proposed in this proceeding for aviation, should be included in the Commission's Rules for operation of locator devices in the maritime services, we agree and a study on that subject is now nearing completion. If a notice of proposed rule making is released that proposes the operation of locator devices in the maritime services, Dillingham's comments filed in this docket will be considered in that proceeding, without prejudice to its right to file additional comments as provided in any forthcoming notice of proposed rule making on the subject.

5. Concerning the Mar Tech assertion that the specified reduced power for testing an ELT with an internal test circuit cannot be met, we do not agree. We do not consider that the tests conducted by Mar Tech resolve this question because the tests were not conducted under the conditions specified in our proposed rule making; i.e. with the transmitter output switched to an internal test circuit (dummy load). We believe, however, that to specify a fixed limit on radiation level at this time may be unrealistic and undesirable in view of the various

sizes and characteristics of ELT chassis and case configurations which ordinarily could be expected to technically influence the radiation emitted from an ELT. We are, therefore, amending the rule by omitting the proposed 15 microvolts per meter and providing in lieu thereof that radiation must be reduced to the minimum practicable level. If this test procedure for ELTs with internal test circuits proves to be inadequate and causes interference to other stations or creates false distress situations, we will consider further rule changes to cope with that matter. The Mar Tech request that provision for operation of an ELT with a 6A3 (voice) emission is not considered desirable and will not be adopted. It has long been our policy to not authorize the use of single channel transmitters in the aviation service. A single channel aircraft transmitter would most likely be equipped with the emergency frequency 121.5 MHz and we believe there would be a tendency for a pilot to use that frequency for routine operational voice communications, to the degradation of the frequency for emergency communications. It is out deliberate intention in this rulemaking proceeding not to depart substantively from this long standing policy. As stated in our notice of proposed rule making, we proposed here, in the interests of safety and to aid in implementing new legislation requiring, in some aircraft, the locator beacons, to permit the licensing of a single channel transmitter designated an ELT, but only when it is operated with an A9 (and not a voice) emission. If a licensee desires to operate on the emergency frequency 121.5 MHz with an A3 (voice) emission, there is already adequate provisions in the rules to permit him to do so under the conditions specified in our rules. In such a case, however, an operator permit and an application filing fee are required.

6. We agree with the AFTRCC recommendation for the reasons furnished that all utility station frequencies be made available for assignment to test ELTs at the design and maintenance stages and we are expanding Section 87.521(e) of the rules to include all these frequencies. No reply comments were received objecting to this recommendation and the FAA which primarily uses these frequencies in its aerodrome control activities, or is involved in the use of the frequencies by our licensees who operate aerodrome control stations, concurs in making all seven of the frequencies available for ELT test and training purposes, provided that coordination is established in each instance with the appropriate FAA Regional Frequency Management Office. Additionally, the matter has been reviewed by the Interdepartment Radio Advisory Committee which interposed no objections to this use of all the utility frequencies.

7. We also agree with the FAA, CDA and AFTRCC, for the reasons they provide, that provision should be made for brief operational tests of ELTs on 121.5 MHz and we are modifying the rule to so provide.

8. In our definitions for ELTs in Parts 1 and 87 of the rules we will delete the word "ship" from that part of the definitions that describes an ELT as ". . . part of an aircraft, ship, or survival craft station . . .". At the time we released the ELT NPRM, we had under study a similar rulemaking proceeding for Part 83 (Stations on Shipboard in the Maritime Services) and we contemplated that the same definition would be suitable in both services for a piece of equipment that is essentially identical, except that in the maritime community it is

generally identified as an EPIRB (emergency position indicating radio beacon). We intended, if possible, to avoid the confusion that could result from having two names and definitions in our rules for essentially the identical piece of equipment. It appears, however, that the maritime community may desire a slightly different definition for a similar transmitter when it is operated in the maritime services. We will, therefore, in this proceeding, orient our definition of an ELT toward operation in the aviation services, with the possibility that we may yet, in the Part 83 proceeding, arrive at a single definition that is acceptable to both the aviation and maritime communities. Additionally, in this proceeding, we are amending Section 87.183(1) to permit the use of an ELT on 243 MHz with the new A9 emission specified in the new rule Section 87.67.

9. In view of the foregoing, IT IS ORDERED, That pursuant to the authority contained in Sections 4(i), 303(r), and 318 of the Communications Act of 1934 as amended, Parts 1, 2 and 87 of the Commission's rules, ARE AMENDED, effective April 23, 1973, as set forth in the attached appendix.

10. IT IS FURTHER ORDERED, That, the proceeding in this Docket IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

I. Part 1 of the rules is amended as follows:

Section 1.1115(c) of the rules is amended by adding a new subparagraph (9) as follows:

§ 1.1115 Schedule of fees for the Safety and Special Radio Services.

* * * * * * * * *

(c) * * *

* * * * * * * * *

(9) Applications for license for an aircraft station to operate with only an emergency locator transmitter.

II. Part 2 of the rules is amended as follows:

1. In Section 2.1 new definitions, Emergency locator transmitter and Emergency locator transmitter test station are added in alphabetical order as follows:

§ 2.1 Definitions.

* * * * * * * * *

Emergency locator transmitter. A transmitter intended to be manually or automatically activated and operated automatically as part of an aircraft or survival craft station with an A9 emission as a locating aid for survival purposes.

Emergency locator transmitter test station. A land station, operated with an A9 emission on the frequencies used for testing emergency locator transmitters, for testing equipment intended to be used as emergency locator transmitters, or for training in the use of emergency locator transmitters.

* * * * * * * * *

2. In Section 2.106, columns 10 and 11 for the frequency bands 117.975–132 MHz are amended by adding the following:

§ 2.106 Table of Frequency Allocation.

* * *	* * *	* * *
Band (MHz)	Frequency (MHz)	Nature {OF SERVICES of stations
1	10	11
* * *	* * *	* * *
117.975–132	121.6–121.9 (NG 34)	* * *
		* * *
		Aeronautical utility land; aeronautical utility mobile; and emergency locator transmitter test.
* * *	* * *	* * *

III. Part 87 of the rules is amended as follows:

1. In Section 87.5 of the rules new definitions, Emergency locator transmitter and Emergency locator transmitter test station are added, in alphabetical order, to read as follows:

§ *87.5 Definition of terms.*

* * * * * * *

Emergency locator transmitter. A transmitter intended to be actuated manually or automatically and operated automatically as part of an aircraft or a survival craft station, with an A9 emission, as a locating aid for survival purposes.

Emergency locator transmitter test station. A land station, operated with an A9 emission on the frequencies used for testing emergency locator transmitters, for testing equipment intended to be used as emergency locator transmitters, or for training in the use of emergency locator transmitters.

* * * * * * *

2. A footnote 6 indicator is added to the emission 13A9 in the emission designator column in Section 87.67(b)(1) of the rules, and a new 3.2A9 emission with footnote 7, is added as follows:

§ *87.67 Types of emission.*

Class of emission	Emission designator	Authorized bandwidth: Below 50 MHz (kilohertz)	Authorized bandwidth: Above 50 MHz (kilohertz)	Frequency deviation (kilohertz)
* * *	* * *	* * *	* * *	* * *
A3J [2]	3A3J [2]	4.0		
A9	13A9 [6]		[6] 25	
A9	3.2A9 [7]		[7] 25	
F1	1.7F1	1.7		
* * *	* * *	* * *	* * *	* * *

* * * * * * *

[7] Applicable only to emergency locator transmitters, and emergency locator transmitter test stations, employing modulation in accordance with that specified in Section 87.73(h) of the rules. The specified bandwidth and modulation requirements shall apply to emergency locator transmitters for which type acceptance is granted after April 23, 1973; to all such transmitters first installed after October 21, 1973; and to all such transmitters after December 30, 1976.

3. A new paragraph (h) is added in Section 87.73 of the rules as follows:

§ *87.73 Modulation requirements.*

* * * * * * *

(h) Emergency locator transmitters, and emergency locator transmitter test stations shall employ amplitude modulation of the carrier

with an audio frequency sweeping downward over a range of not less than 700 Hz, within the range 1600 to 300 Hz, with a sweep rate between 2 and 4 times per second. The modulation applied to the carrier shall be in accordance with that specified in the Radio Technical Commission for Aeronautics (RTCA) Document Numbers DO–145 or DO–146. (Available from Radio Technical Commission for Aeronautics, Room 655, 1717 H Street NW., Washington, D.C. 20006.)

4. Section 87.93 is amended to read as follows:

§ 87.93 Routine Tests.

(a) The licensees of all classes of stations in the aviation services are authorized to make such routine tests, other than emergency locator transmitter tests, as may be required for the proper maintenance of the stations provided that adequate precautions are taken to insure that there is no interference with the communications of any other station.

(b) An emergency locator transmitter (ELT) may be tested only under the conditions set forth below.

(1) An ELT fitted with an internal test circuit having a manually activated test switch and an output indicator may be tested provided that the switch, in the test position:

(i) permits the operator to determine that the unit is operative;

(ii) switches the transmitter output to a test circuit (dummy load), the impedance of which is equivalent to that of the antenna affixed to the ELT; and

(iii) reduces radiation to the minimum level that is technically feasible.

(2) An ELT not fitted with an internal test circuit may be tested in coordination with, or under the control of, a Federal Aviation Administration representative to insure that testing is conducted under electronic shielding, or other conditions, sufficient to insure that no transmission of radiated energy occurs that could be received by a radio station and result in a false distress signal. If testing with FAA involvement as described above is not practicable or feasible, brief operational tests are authorized provided the tests are conducted within the first five minutes of any hour, are not longer than three audio sweeps, and, if the antenna is removable, a dummy load is substituted during the test.

5. Section 87.139(a)(2) of the rules is amended as follows:

§ 87.139 Operator licenses not required for certain operations.

(a) * * *

(2) Operation of an aircraft station using only an emergency locator transmitter, or a survival craft station while it is being used solely for survival purposes, or for testing of such stations.

* * * * * * *

6. In Section 87.183, the introduction text in paragraph (f), and paragraph (1) are amended to read as follows:

§ 87.183 Frequencies available.

* * * * * * *

(f) 121.5 Megahertz: This is a universal simplex clear channel frequency for use by aircraft in distress or condition of emergency. Except for transmissions of signals by an aircraft station operated with only an emergency locator transmitter using an A9 emission, it will not be assigned to aircraft unless other frequencies are assigned and available for normal communications. The channel is available, as follows:

* * * * * * *

(1) 243 MHz: This is an emergency and distress frequency available for use by survival craft stations, emergency locator transmitters and equipment used for survival purposes which are also equipped to transmit on the frequency 121.5 MHz. Use of 243 MHz shall be limited to transmission of signals and communications for

survival purposes. Types A2, A3 or A9 emissions may be employed, except in the case of emergency locator transmitters where only A9 is permitted.

* * * * * * *

7. The title of Subpart P of Part 87 of the rules is changed to read as follows:

SUBPART P—LAND TEST STATIONS.

8. In Section 87.521 a new paragraph (e) is added as follows:

§ *87.521 Frequencies available.*

* * * * * * *

(e) The frequencies 121.6, 121.65, 121.7, 121.75, 121.8, 121.85 and 121.9 MHz may be assigned to emergency locator transmitter test stations on the condition that (1) no harmful interference is caused to voice communications on these frequencies, and (2) coordination is established with the appropriate FAA Regional Frequency Management Office prior to activating the transmitter. Authority to operate on these frequencies does not include authority to operate on any harmonically related frequency; i.e. 243.2 MHz, etc.

9. In Section 87.523 the existing paragraph is designated paragraph (a) and a new paragraph (b) is added as follows:

§ *87.523 Scope of service.*

(a) Transmissions by radionavigation land test stations shall be limited to the necessities of the testing and calibration of aircraft navigational aids and associated equipment when such testing must be performed by means of radio transmissions.

(b) Transmission by emergency locator transmitter test stations shall be limited to the necessities of testing emergency locator transmitters and to training operations in connection with the use of such transmitters.

10. In Section 87.525 the existing paragraph is designated paragraph (a) and a new paragraph (b) is added as follows:

§ *87.525 Eligibility.*

(a) Authorizations for radionavigation land test stations (MTF) will be granted only to applicants engaged in the development, manufacture or maintenance of aircraft radionavigation equipment. Authorizations for radionavigation land test stations (OTF) will be granted only to an applicant who agrees to establish the facility at an airport for the use of the public.

(b) Authorizations for emergency locator transmitter test stations will be granted only to persons having a need for training personnel in the operation and location of emergency locator transmitters, or for testing in connection with the manufacture or design of emergency locator transmitters.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ACCURACY IN MEDIA, INC., WASHINGTON, D.C.
Concerning Fairness Doctrine Re NBC

FEBRUARY 27, 1973.

ACCURACY IN MEDIA INC.,
1232 Pennsylvania Building,
425 13th Street NW.,
Washington, D.C.

GENTLEMEN: This will refer to your letter of complaint, dated January 29, 1973, concerning an NBC documentary on San Francisco's Chinatown which was broadcast January 2, 1973.

In particular, you state that the documentary presented "a view of Chinatown as seen through the eyes of two young Chinese, both of whom were extremely critical of conditions in this important ethnic community." You list the following statements as having been made in the program: Chinatown is a "crummy place"; "The community lacks cats because they are eaten by the starving people"; Chinatown is "a 'kennel' maintained by white racism," "a depressing ghetto," "a trap from which the elderly cannot escape"; "Housing is probably the worst in San Francisco . . . the elderly living in tiny cubicles"; Chinatown "has the highest population density in the country save Harlem" and "the highest TB rate in the country," and "the government likes to keep it (that way)"; "There is no such thing as a strong Chinese family in Chinatown"; "The modern American image of the Chinese-Americans is typified by the songs and movies of the 1930's"; and "The best bookstore in the community is one that specializes in communist literature and posters."

You state that "these and other views on the program are one-sided and give the audience a distorted picture of this important ethnic community. A blanket condemnation of an ethnic community of several thousand people is automatically controversial and is certainly of public importance. The community has a right to be presented to the nation in a balanced light, not through the eyes of its most radical critics only." You further state that the program "failed to meet the requirements of the fairness doctrine" and that "no balancing material . . . has been aired." You therefore request the Commission to "find NBC and its affiliated stations in violation of the fairness doctrine," and to instruct them "to provide their audience with programming that will give a truer and more balanced picture of Chinatown."

As you know, the starting point in determining whether the fairness doctrine is applicable to particular programming and whether reasonable opportunity has been afforded for the presentation of contrasting views is an adequately precise specification of the controversial issue of

public importance involved, together with support for the claim that the program substantially addressed that particular issue. Thus, the Commission has refused to treat isolated remarks as being of sufficient import to trigger fairness doctrine obligations, *National Broadcasting Company* (AOPA complaint), 25 F.C.C. 2d 735 (1970), and has put upon complainants the burden of defining the issue and furnishing the basis for their view that it was discussed to a cognizable degree. Your instant complaint does not provide sufficient information in these respects to warrant further consideration of the question of whether NBC has complied with fairness with respect to the program in question. For while you have cited a number of remarks allegedly made in the program which clearly indicate the speakers' belief that living conditions in Chinatown are not adequate, there is no indication in your letter that this view presents a controversial issue of public importance, either nationally or in the San Francisco area.[1] Moreover, your characterization of the issue, while not entirely clear, appears to be quite different, i.e., that there has been a "condemnation" of the Chinese ethnic community. This, of course, means condemnation of a group of people. However, your letter contains no information to indicate that the program in question attacked the qualities of the Chinese people in San Francisco, which would be quite a different matter from deploring the conditions in which they are required to live. The former issue, as you urge, may well be "automatically" controversial and of public importance; the latter one is not.

Further consideration of your complaint would therefore require a clearer specification of the issue you believe to be involved, together with some additional information demonstrating that the issue is controversial and of public importance, either nationally or in the local area of any station which broadcast the program, that the program contained a substantial discussion of the issue, and that NBC has not afforded a reasonable opportunity for the presentation of contrasting viewpoints (which, as you know, need not necessarily be on the same program).

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

[1] Here you should note that, as explained to you in prior letters and rulings, the mere allegation that certain remarks or statements are inaccurate or present a "one-sided" or "distorted" view of their subject and that the "truth" or "the other side" has not been presented will not provide a sufficient basis for a fairness complaint absent a showing that such remarks or statements were substantially addressed to a specified controversial issue of public importance.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
F. G. FULLER, Jr., ORLANDO, FLA.
Concerning Fairness Doctrine Re Station
WKIS

FEBRUARY 9, 1973.

Mr. F. G. FULLER, Jr.,
1792 Hiawassee Road,
Orlando, Fla.

DEAR MR. FULLER: This is in response to your letter of complaint, dated January 4, 1973, against Standard Broadcast Station WKIS, Orlando, Florida, concerning certain news commentary which it has presented on the issue of the location of a state half-way rehabilitation center. In particular, you state that on November 15, 1972, the station broadcast a commentary criticizing the people of Pine Hills and the Pine Hills Community Council for their opposition to the location of a criminal rehabilitation center in their area. You state that this matter presents a controversial issue of public importance in the station's service area as evidenced by public hearings and extensive local media coverage. You further state that you phoned the General Manager of Station WKIS requesting time to present a view opposed to the station's commentary but were refused for the reason that "The station manager felt the coverage afforded by station WKIS covered the situation adequately." In this regard, you contend that since the commentary was sharply critical of those opposing location of the rehabilitation facility in your community, it "could not be balanced by the heretofore factual coverage of the daily activities of the people and the council."

As explained in our previous letter to you of December 29, 1972, where complaint is made to the Commission under the fairness doctrine, the Commission expects a complainant to specify, *inter alia*, the basis for his claim that the station has broadcast only one side of the particular issue involved and has failed to afford reasonable opportunity for the presentation of contrasting views on that issue in its overall programming. Although you state that the commentary in question presented a view sharply critical of opposition to the location of a rehabilitation center in your community and "could not be balanced by the heretofore factual coverage of the daily activities of the people and council," you have not provided the Commission with any factual basis for that conclusion. You should understand that the fairness doctrine requires only that a station presenting one side of a controversial issue of public importance afford a reasonable opportunity for the presentation of contrasting views in its *overall* programming on that issue. In this regard, it is within the good faith discretion of the licensee to make and implement reasonable judgments as to what

viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all other facets of such programming. Thus, the fairness doctrine does not require a station to balance editorial with editorial or viewpoint with viewpoint according to any precise mechanical formula. Compliance with the fairness doctrine can be achieved through news coverage in which contrasting views or positions are presented in the context of reporting governmental proceedings, group actions, and other similar news events. Further consideration of your complaint would therefore depend upon a more detailed and specific statement of facts which would support your conclusion that the station's overall programming on the issue involved has not afforded reasonable opportunity for the expression of views opposed to the position taken in its commentary.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
LEO MAES, MAYOR, CITY COUNCIL, WALSENBURG, COLO.
Concerning Fairness Doctrine
Re Station KFLJ

FEBRUARY 21, 1973.

Hon. LEO MAES,
Mayor, City Council,
Walsenburg, Colo.

DEAR MAYOR MAES: This refers to the complaint filed by you and members of the Walsenburg City Council against station KFLJ in Walsenburg, Colorado. We regret that we are only now able to respond to your last letter but, because the staff was for many months swamped with complaints and inquiries related to the 1972 primaries, conventions and general elections, which would have become moot unless they were resolved at once, it was necessary to postpone further consideration of some complaints.

In a letter dated May 10, 1972 you and Council members stated that Mr. Floyd Jeter is the owner, operator, chief broadcaster and news commentator of KFLJ; that "he has a history of using his microphone to inflict his private opinions" on the community; that he charges the public $1.80 per minute for the opportunity to air dissenting viewpoints; that Mr. Jeter's comments and editorializing do not carry any mention of "paid political announcement"; that he is extremely biased; that he blatantly makes false statements; that he has become the leader in a movement to recall the present Walsenburg City Council; that this stems from a personal grievance of Mr. Jeter's against the council concerning his refusal to abide by the building permit code of the city; and that in regard to this recall movement, Mr. Jeter has aired falsehoods about the council. Accompanying your letter of complaint you enclosed a tape recording as an example of Mr. Jeter's "daily tirade urging citizens to vote to recall the council." You stated that among the false allegations contained in this broadcast were statements that the previous city budget was thrown out by the present council, and that the Parts and Upkeep fund was close to being depleted. You requested an investigation of station KLFJ and its use of the "public airways for private vindictiveness."

In response to a Commission inquiry regarding these allegations, the licensee stated in a letter dated June 20 that you were offered time to reply to Mr. Jeter's remarks but that you declined the use of the time; that Councilwoman Anna Mae Nunnelee asked if the air time could be used to tell of the city council's accomplishments; that Mr. Jeter

109-031—73——3

replied with an offer of "ten minutes of air time during the 12:30 programming or a longer period in a time slot with less commercials." KFLJ also contends that neither you nor any member of the council has ever approached the station for free or commercial time to discuss council business or opinions, but that nevertheless it extended an offer to you to record and air excerpts of the city council meetings.

After receiving a copy of the station's response, in a letter dated June 26 you stated that Mr. Jeter did offer time to you to reply to the statements he made and you refused this offer because "it would not serve any useful purpose since answer to the statements would lead to another statement." You further stated that KFLJ had been receiving $25 monthly for airing city council meeting minutes until this payment was discontinued by the council; that during the last days of January 1972, a KFLJ employee called you to make a tape stating that it had to be ready by February 1; that you were unable to comply and that the offer was made apparently to fufill the obligation of the station which resulted from the $25 paid KFLJ by the council in January 1972; that the station had used words such as "pocketing money" and "criminal charges" in regard to the city council; and that the controversy between Mr. Jeter and the city council was political in nature due to the fact that Mr. Jeter initiated the circulation of recall petitions against seven city councilmen. You requested time to reply to Mr. Jeter whenever he uses KFLJ to encourage citizens to recall the council.

In response to an additional Commission inquiry, in a letter dated October 4, 1972 KFLJ stated that it never had a policy under which the public was charged $1.80 per minute for the opportunity to air dissenting viewpoints; that the city council has been provided with copies of editorials with which members might not agree; and that on such occasions offers of time have been extended to you and the council.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented, and if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith.

Mr. Jeter contends that he has offered you time to respond to his remarks about the council. You agree, but state that you refused his offer because you felt that any response on your part would promote more comment by Mr. Jeter. However, even if this were the case, it would not necessarily constitute a violation of the fairness doctrine, since one of the major purposes of the fairness doctrine is to promote robust, wide-open debate with, of course, reasonable opportunities being provided for contrasting views. Mr. Jeter also maintains that the council has been provided with copies of the editorials with which members might not agree, and that he has extended an offer to you to broadcast responses to them, statements with which you do not take issue. Thus, on the basis of the information before the Commission, it cannot be said that KFLJ has failed to afford a reasonable opportunity for the presentation of contrasting views on the issues pertaining to the city council.

The licensee denies having a policy under which viewpoints are broadcast only when payment is made. In absence of evidence to the contrary, no finding can be made at this time that the licensee has such a policy.

You also state that the phrases "pocketing money," and "criminal charges" were used by Mr. Jeter in connection with the council. A personal attack for the purposes of the Commission's Rules is an attack upon the honesty, character, integrity, or like personal qualities of an identified person or group.

When a personal attack is alleged, the Commission expects a complainant to submit specific information indicating, *inter alia*, the words or statements broadcast; the date and time the broadcast was made; the basis for the claim that the words broadcast constitute an attack upon the honesty, character, integrity or like personal qualities of an identified person or group; the basis for the claim that a personal attack was broadcast during the presentation of views on a controversial issue of public importance; the basis for the claim that that which was discussed was a controversial issue of public importance, either nationally or in the station's local area, at the time of the broadcast; and whether the station within one week of the alleged attack: (i) notified the person or group attacked of the broadcast; (ii) transmitted a script, tape, or accurate summary of the broadcast if a script or tape is not available; and (iii) offered a reasonable opportunity to respond over the station's facilities. Should you provide such information, this aspect of your complaint will be given further consideration.

You also allege that Mr. Jeter has failed to tag his comments and editorials as "paid political announcements." Neither the Communications Act nor the Commission's Rules require a broadcast licensee to label commentary or editorials as paid political broadcasts. Sponsorship identification must be broadcast, however, if payment is received by the station or commentator for the broadcast of any matter, but it does not appear that you have alleged such payment to Mr. Jeter or the station.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by

writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES AND KENNETH T. LYONS
Concerning Fairness Doctrine Re Station
WFAI, Fayetteville, N.C.

FEBRUARY 22, 1973.

BEASLEY BROADCASTING CO.,
Licensee of Radio Station WFAI,
Box 649,
Fayetteville, N.C.

GENTLEMEN: This is in further reference to the November 16, 1972 complaint filed by the National Association of Government Employees (NAGE) and Mr. Kenneth T. Lyons, against radio station WFAI, Fayetteville, North Carolina. The complaint concerned certain announcements broadcast by you on behalf of the American Federation of Government Employees (AFGE), in connection with a November 1, 1972 union representation at Fort Bragg, North Carolina.

As you will note by the enclosed letter to NAGE, the Bureau stated that it could not find that you acted unreasonably in determining that the union representation election was not a controversial issue of public importance in the station's listening area.

The complaint states that Mr. Harry Breen, a national Vice-President of NAGE, heard the AFGE ads broadcast on the night of October 31, 1972, and immediately called the station explaining the urgency of the situation and requested an opportunity to respond before the election the following day. You denied his request for an opportunity to respond and stated that the station had a "policy not to accept advertising after the close of business hours." In regard to this action the complainants stated that "(I)f the station manager did not understand the importance of an opportunity for reply before November 1, the only possible reasons for that lack of understanding were the station's refusal to allow Mr. Breen to talk to the manager and the failure of the employee in charge to transmit Mr. Breen's message to him. And of course proper station procedure would have disclosed the problem before the advertisements were broadcast, since the station would have contacted NAGE during business hours on October 31, before the ads were aired."

You stated that on November 1, 1972, after conferring with your attorney, a letter was sent to NAGE and Mr. Kenneth T. Lyons offering them an opportunity to respond to the AFGE advertisements. It therefore appears that at the time Mr. Breen was advised that the station had a "policy not to accept advertising after the close of business

hours," you had made no determination on the merits of Mr. Breen's request, including such matters as to whether a controversial issue was involved and whether, in view of the time element, denial of Mr. Breen's request would render moot whatever remedy he might have. We believe that your actions on October 31 were inconsistent with a licensee's obligations concerning the handling of controversial issues of public importance, particularly when time is of the essence.

Rather than rejecting a request on the basis of some general policy which apparently was adopted with other situations in mind, the licensee should have considered Mr. Breen's request on its merits and in light of the time element involved. Accordingly, you are requested to inform the Commission in writing, within ten days of the date of this letter, how you intend to deal with similar situations in the future, i.e., those which may involve controversial issues and/or personal attacks and where time is of the essence.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
NATIONAL AUDUBON SOCIETY, OWENSBORO, KY.
Concerning Fairness Doctrine Re Stations WSAZ–TV, Huntington, W. Va., and WAVE–TV, Louisville, Ky.

FEBRUARY 16, 1973.

Mr. JOHN L. FRANSON,
National Audubon Society,
1020 East 20th Street,
Owensboro, Ky.

DEAR MR. FRANSON: This letter will refer to your January 30, 1973 complaint against WSAZ–TV, Huntington, West Virginia and WAVE–TV, Louisville, Kentucky.

You state that on December 29, 1972, on behalf of the National Audubon Society, you wrote WSAZ Television and WAVE–TV requesting equal time to present your organization's views on the issue of strip mining. You further state that WSAZ Television broadcast two 30 minute programs purchased by the Kentucky Surface Mining and Reclamation Association, a strip mining concern, as contrasted with only one 30 minute program presented by the Appalachia Defense Fund, which is opposed to strip mining; that WAVE–TV had also broadcast a greater number of programs and spots by pro-strip mining organizations than by organizations who are opposed to strip mining; and that WSAZ and WAVE denied your December 29, 1972 requests for equal time.

In a January 9, 1973 response to your December 29, request, WSAZ Television stated that its 1972 records showed that 3 hours and 12 minutes were devoted to anti-strip mining views; that 3 hours and four minutes were devoted to views favoring strip mining; and that one hour and two minutes had been devoted to views which the station classified as neutral. The station concluded by stating it felt that the issue had been fairly discussed and that no additional coverage of the matter was warranted.

WAVE–TV responded to your December 29, 1972 letter on January 9, 1973, stating that it had run programs and spots covering both sides of the environmental aspects of strip mining, and that it recognized the continuing effect strip mining has on the Kentucky environment and intended to keep the viewers informed on the subject. Although it did not state that the National Audubon programs would be broadcast, it did request "prints" of these broadcasts in the event such material was needed in the future.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

From the responses of the licensees, which you have submitted, it appears that WSAZ has afforded reasonable opportunity for the presentation of contrasting views during 1972, and that WAVE-TV has presented contrasting views in its overall programming and intends to continue its coverage of the issue. Under these circumstances, it does not appear that any action by the Commission is warranted at this time. Should you have specific information that any licensee in its overall programming has failed to comply with the fairness doctrine, please let us know and we will give this matter further consideration. (See page 10416 of the enclosed Public Notice regarding the filing of fairness doctrine complaints.)

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
RICHARD WOLF, NEW YORK, N.Y.
Concerning Fairness Doctrine Re Station
WPIX, New York, N.Y.

FEBRUARY 16, 1973.

Mr. RICHARD WOLF,
102 Earl Hall,
Columbia University,
New York, N.Y.

DEAR MR. WOLF: This letter will refer to your May 2, 1972 complaint against Television Station WPIX, New York, New York, in which you allege a fairness doctrine violation. As stated in our letter to you of January 30, 1973, we regret that we are only now able to respond to your complaint because of the Commission workload related to the 1972 primaries, conventions and general elections. Ordinarily your complaint would have been answered sooner. You state that "Senator Buckley Reports", a monthly series broadcast by the station, dealt with one side of the controversy surrounding the desirability of the United States Information Agency's operations (hereinafter U.S.I.A.) as then conducted; that WPIX has failed to afford a reasonable opportunity for the presentation of contrasting views; and that Senator Buckley, during the interview with Mr. Herschensohn of the U.S.I.A., supported the agency's current practices and attempted to demonstrate its importance by showing a film entitled "Czechoslovakia, 1968". In addition you state that Senator William Fulbright, as Chairman of the Senate Foreign Relations Committee, was personally attacked by Mr. Herschensohn during this program for his opposition to U.S.I.A.

The station responded to you by stating that as a result of Senator Buckley's interview with Mr. Herschensohn an opportunity for response by Senator Fulbright was provided, but that the Senator declined the opportunity. In addition, WPIX stated that it carried items relating to this matter in newscasts during the week preceding the Buckley broadcast and believes that this news coverage was responsive to the public's right to be informed.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air

during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith.

Where complaint is made to the Commission, the Commission expects a complainant to submit specific information indicating: the basis for the claim that the station broadcast only one side of the issue or issues in its overall programming (complainant should include accurate summary of the view or views broadcast and presented by the station); and whether the station has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on that issue or issues. *Allen C. Phelps*, 21 F.C.C. 2d 12, 13 (1969). On the basis of the information before the Commission, it appears that you have not submitted specific information setting forth reasonable grounds for your conclusion that the licensee in its overall programming has failed to present opposing views on the issue with which you are concerned.

As to your allegation that Mr. Herschensohn personally attacked Senator William Fulbright's position regarding the U.S.I.A. as "very simplistic, very naive and stupid," Section 73.679 of the Rules and Regulations state that "a personal attack occurs when an attack is made on the honesty, character, integrity or like personal qualities of an identified person". The mere mention of a person or group, or even certain types of unfavorable references thereto, do not constitute personal attacks as defined by the Commission, and bona fide newscasts, bona fide news interviews, and on-the-spot coverage of a bona fide news event are exempt from the personal attack rule. Although it cannot be determined whether the program in question was the type exempt from the personal attack rule, it does not appear that the language broadcast can be considered a personal attack on the "honesty, character, integrity or like personal qualities" of Senator Fulbright.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
SUN NEWSPAPERS, INC., EDINA, MINN.
Concerning Fairness Doctrine Re Minneapolis Tribune and Station WCCO

FEBRUARY 16, 1973.

MR. CARROLL E. CRAWFORD,
President and Publisher, Sun Newspapers, Inc., 6601 West 78th Street, Edina, Minn.

DEAR MR. CRAWFORD: This refers to your January 11, 1973 complaint against stations WCCO and WCCO–TV, Minneapolis-St. Paul, Minnesota.

You allege that the *Minneapolis Tribune* and its affiliated broadcast stations WCCO and WCCO–TV carried news stories and issued reports covering the financial conditions of the *Sun Newspapers, Inc.*, of which you are the President; that these articles and newscasts demonstrated a joint and concerted effort on the part of the *Minneapolis Tribune*, WCCO and WCCO–TV to cause embarrassment and serious financial injury to *Sun Newspapers, Inc.*: that, in your opinion, these actions were "irresponsible, repetitious and malicious, which contained false statements, unfounded rumors and half-truths." In addition, your letter states that these actions raise serious questions concerning the intent of these media to exploit and enhance "their near monopolistic position" and that you feel such actions would not be considered to be in the public interest. You request the Commission to initiate an investigation in order to determine whether this licensee possesses the requisite qualifications to hold licenses from the Federal Communications Commission.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

"The general rule is that we do not sit to review the broadcaster's news judgment, the quality of his news and public affairs reporting, or his taste. The exceptions involve the 'fairness,' 'equal opportunity,' and 'personal attack' doctrines—designed not to affect *what* is presented, or to stifle the presentation of views, but rather to encourage a full, free and fair discussion." *Letter to ABC, NBC, CBS*, 16 F.C.C. 2d 650 (1969). With respect to the accuracy of program material or allegations that a station has distorted or suppressed news or has staged or fabricated news occurrences, the Commission's policy in this area is set forth in a number of statements, including its *Letter to Mrs. J. R. Paul*, 26 F.C.C. 2d 591 (1969), a copy of which is enclosed. As

you will note, the Commission believes that it, as the governmental licensing agency, should take action in the sensitive area of news reporting only when it has substantial extrinsic evidence that the licensee has deliberately distorted its news reports or staged news events.

In regard to your allegations that broadcast of the news items constituted an anti-competitive activity, you have provided no evidence other than inferences which might be drawn from the content of the news broadcasts. As you know, the Commission limits the number of radio and television stations which may be licensed to a single entity, and also takes cognizance of newspaper ownership under certain circumstances in determining whether there is an undue concentration of control over the media. Moreover, on July 15, 1970, in granting the applications for renewal of the licenses of WCCO and WCCO–TV, the Commission resolved media concentration issues in favor of the licensee. In this connection the Commission stated:

> As previously stated, we have both the duty and the authority, under our licensing powers, to consider media concentration. At the time we designated this proceeding for evidentiary hearing, we were also concerned with media concentration in the St. Paul-Minneapolis area because of the serious anticompetitive charges raised against Midwest. However, based upon all of the information now before us, we believe that the public interest would not be served by examining such media concentration in the context of the particular renewal proceeding and that, accordingly, such matters are more appropriately dealt with in general rule-making proceedings. In this regard we note that there is now a comprehensive outstanding inquiry in Docket 18110 dealing with the Commission's multiple ownership rules. (24 F.C.C. 2d 625, 677.)

Although a pattern of broadcasting certain types of program matter may provide grounds for determining that a licensee is using his facility in an anti-competitive way or otherwise to subordinate the public interest to his private interest, it does not appear that the broadcasts here described, in and of themselves, establish such practices.

In view of the foregoing no further action by the Commission is warranted at this time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73-262

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
AMENDMENT OF SECTION 73.202, TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (ADRIAN, MICH., AND WEST LAFAYETTE, IND.)	Docket No. 19512 RM-1820 RM-1822

SECOND REPORT AND ORDER

(Adoped March 7, 1973; Released March 13, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has before it for consideration the FM channel assignment proposal, *RM-1822, West Lafayette, Indiana*, remaining for disposition in this proceeding, instituted by Notice of Proposed Rule Making, released on May 23, 1972 (FCC 72-430, 37 Fed. Reg. 10579). Previously, one proposal, RM-1791, Winchendon, Massachusetts, was severed from this proceeding and consolidated into Docket No. 19540 by Order, released July 11, 1972 (FCC 72-604). The other proposal, RM-1820, Adrian, Michigan, was disposed of by the First Report and Order, released herein on November 13, 1972 (FCC 72-997, 37 F.C.C. 2d 1021).

2. *West Lafayette proposal.*[1] the petitioner, Thomas Jurek, proposes the assignment of FM Channel 280A to West Lafayette, Indiana (population, 19,157), for a first FM assignment for which he can apply. West Lafayette is located in west-central Illinois, adjoining the larger community of Lafayette, Indiana (population, 44,955) on the west, separated only by the Wabash River and connected by bridges. Both communities are in Tippecanoe County (population, 109,378), in the same standard metropolitan statistical area (coextensive with Tippecanoe County), and in the same urbanized area (population, 79,117). While without an FM assignment or outlet, West Lafayette has an AM broadcast outlet, an unlimited-time AM educational operation (WBAA), licensed to Purdue University. It is also served by the Lafayette AM and FM broadcast stations. These number two commercial AM stations, one of which is an unlimited-time operation (WASK) and the other (WAZY), a daytime-only operation; three commercial FM stations, two of which operate on Class A channels (WAZY-FM and WXUS), and the other, on a Class B channel (WASK-FM); and an educational FM station (WJJE), operating on an educational channel assignment (220A). Station WLFI-TV at Lafayette also serves West Lafayette.

3. Comments supporting his West Lafayette Channel 280A pro-

[1] Population figures are from the 1970 U.S. Census reports unless otherwise specified.

posal were filed by Jurek. Comments opposing the proposal were filed by Lafayette Broadcasting, Inc. (Lafayette Broadcasting), licensee of Stations WASK(AM) and WASK-FM; by Tiprad Broadcasting Co., Inc. (Tiprad), licensee of FM Station WXUS; and by WCVL, Inc., licensee of Station WCVL, an unlimited-time AM broadcast station, at Crawfordsville, Indiana. Reply comments were filed by Jurek and the two opposing Lafayette licensees.[2]

4. *Crawfordsville, Indiana, counterproposal.* The WCVL comments also included a counterproposal, proposing the assignment of Channel 280A to Crawfordsville, Indiana, instead of to West Lafayette. Crawfordsville (population, 13,842) is located about 27 miles south of West Lafayette in Montgomery County (population, 33,930). In addition to WCVL's AM station (WCVL), Crawfordsville has one FM outlet, Station WNDY, which operates on Channel 292A, the only FM channel assigned to Crawfordsville and in Montgomery County. This station is licensed to Wabash College Radio, Inc., described by the licensee in its license file as an "Indiana not-for-profit corporation organized for the purpose of owning and operating a radio station as a facility which will provide training for college students." The opposing Lafayette licensees also support adoption of this alternative Channel 280A assignment proposal.

5. Channel 280A can be assigned to West Lafayette in conformance with all minimum mileage separation requirements without any change in other channel assignments and without adverse preclusionary effect on new adjacent channel assignments. As noted in the rule making notice on the proposal, however, a West Lafayette Channel 280A assignment would foreclose assignment of Channel 280A to Crawfordsville or to any one of three other communities in this area of Indiana (Logansport, Frankford or Delphi). Logansport (population, 19,255) has one AM broadcast station (WSAL) and two FM channels assigned (Channel 272A, occupied by Station WSAL-FM, and Channel 237A, occupied by Station WVTL at nearby Monticello). Frankford (population, 14,956) has one AM broadcast station (WILO) also and one FM channel (259) assigned, occupied by Station WILO-FM. Delphi (population, 2,582) is without an FM assignment or aural broadcast outlet. Other available FM channel assignment possibilities in this area appear nonexistent, and an opportunity was afforded in this proceeding for comparative consideration of any Channel 280A assignment proposals submitted for these communities with that for West Lafayette. Only one for Crawfordsville was submitted, and since this record evidences present demand and interest in assignment and use of Channel 280A only at West Lafayette or Crawfordsville, and there appear no public interest reasons for preferring the other three communities

[2] A letter opposing the use of Channel 280A at West Lafayette was also received from Charles L. Brown of West Lafayette. His opposition stems from probable interference from a West Lafayette Channel 280A station to reception in the West Lafayette area of Station WFIU, which operates on Class B Channel 279 at Bloomington, Indiana, located some 90 miles south of West Lafayette. Since the normal service contour of Class B FM stations which the Commission's rules recognize in the assignment of channels extends no more than approximately 35 miles, this consideration would not be a basis for not making the proposed Channel 280A assignment at West Lafayette. (It is noted also that since Bloomington is located in the same general direction as Crawfordsville, and the signal from a Crawfordsville station would be much stronger than that of the Bloomington Station (WFIU), the alternatively proposed assignment of Channel 280A to Crawfordsville would also be likely to cause interference to reception of the Bloomington FM station in the West Lafayette area.)

where Channel 280A could be assigned, considering their size and existing assignments and stations, we think it justifiable to narrow our consideration to West Lafayette or Crawfordsville for the requested Channel 280A assignment.

6. In support of his West Lafayette Channel 280A proposal, Jurek stresses in his comments, as he did in his prior showing, that West Lafayette, although contiguous to the larger community of Lafayette, is not a suburb of Lafayette but an independent "sister" city. To indicate that West Lafayette is an independent city of sufficient significance to warrant a first local FM outlet of its own, he points out that it has a completely separate and independent city government, its own police and fire department, schools, public library and 25 churches. He also points out that Purdue University, with 37,000 enrolled students, of which about 25,000 study at the West Lafayette campus, is situated in West Lafayette, as are a number of growing industries, such as Centralab Electronics, CTS Corporation, Lafayette Pharmacal, Lafayette Pipe Co., and Warren Industrial Aggregates Corporation. In addition he offers statistics to show that the per capita income in West Lafayette is higher than in Lafayette and that the population growth trend is greater in West Lafayette than in Lafayette. He bases this on the fact that between 1960 and 1970 West Lafayette increased from 12,680 to 19,157 in population (a 51 percent increase) whereas Lafayette increased from 42,330 to 44,955 (a 6 percent increase) in population.

7. Jurek affirms that if Channel 280A is assigned to West Lafayette, he will apply for the channel and, if authorized, build and operate on it. He urges that because of the importance of West Lafayette as a University Center, it is a "natural" place for an FM station and that an FM station there stands a much better chance for success than in some small rural community. He states that, if authorized to operate on Channel 280A at West Lafayette, he will install stereophonic transmission equipment and provide an entertainment service compatible with the "hi fi" equipment commonly used in the academic community without neglecting the public affairs, instructional, news, and other listening tastes of the community as a whole.

8. WCVL, in opposition to the Jurek West Lafayette Channel 280A proposal and in support of its alternative Crawfordsville Channel 280A proposal, contends that while West Lafayette is technically an independent community, the fact remains that it and Lafayette are part of the same urbanized area and the same Standard Metropolitan Statistical Area; form a single radio market, and, for all practical purposes, are a single metropolitan area whose two principal parts are connected by three bridges. Since there are two AM stations at Lafayette, and another AM station at West Lafayette, as well as 3 commercial FM stations at Lafayette (also an FM educational station), it urges that the needs of Crawfordsville for the channel are more compelling than those of West Lafayette since it has only two local stations (Station WCVL, its AM operation, and FM station WNDY, licensed to Wabash College Radio, Inc., which operates commercially on Channel 292A), neither of which, it asserts, is able at the present time to meet all of the needs of the residents of the Crawfordsville area.

9. In support of this position, WCVL avers that Station WNDY is not a full-time FM station in any real sense and does not fully meet Crawfordsville's needs for local FM service since it normally is not in operation during the summer months. It notes that in 1972 Station WNDY suspended operation on April 30th and was not scheduled to resume operation until the opening of college in the fall.[3] WCVL also points out that its unlimited-time AM station at Crawfordsville, which operates with 250 watts power and is required to use a directional antenna at night, is severely restricted in coverage and cannot fully satisfy the needs of the area normally associated with Crawfordsville. The situation, it claims, is especially disturbing in the early morning when there is a public need for school information and up-to-the-minute information about severe weather conditions. Because of the restricted nighttime coverage of its AM station, it states that many of the station's daytime listeners are deprived of its nighttime sports and other program services. WCVL estimates that almost half of the more than 33,000 people in Crawfordsville's home county (Montgomery) are without adequate broadcast service, and it avers that, if Crawfordsville is assigned Channel 280A, it will promptly file an application for use of the channel to provide such service.

10. The Lafayette licensees, Lafayette Broadcasting and Tiprad, essentially oppose the West Lafayette Channel 280A proposal on grounds that Lafayette and West Lafayette are one market and should be so considered in making a fair, efficient and a just assignment of FM frequencies pursuant to Section 307(b) of the Communications Act; that both Lafayette and West Lafayette are more than adequately served by existing AM and FM commercial and educational stations in this market; that there is no need for another FM station in this market area to serve any unserved needs or interests of West Lafayette; and that the economic impact of an additional FM station in the market would adversely affect the existing FM stations serving the area. Tiprad claims that the petitioner's request is nothing more than an attempt to secure an additional channel for the Greater Lafayette Area without regard to its effect on the other local broadcast media, the needs or interests of West Lafayette, or the inability of West Lafayette to support a station. Lafayette Broadcasting urges that it is not efficient procedure to make an assignment to a small town in a metropolitan area, and then at the application stage to decide that the 307(b) mandate requires a showing on whether the small town has programming needs distinct and different from those of the larger city; whether the program needs of the small town are being met by the existing station, and whether there is financial support for the proposed station available in the small town. *Berwick Broadcasting Corporation*, 20 F.C.C. 2d 393 (1969). It is submitted that before assigning an FM channel to West Lafayette, the Commission should consider whether better use might be made of the channel in another lo-

[3] Our records show that Station WNDY requested permission to remain silent for that period, giving as reasons therefore, that, due to the fact that the station is operated by Wabash College students, there would be insufficient personnel available to maintain operation during that period; that the station's engineer would be leaving the area for the summer; and that the station could not afford to hire personnel over the summer. Permission to suspend operation of Station WNDY from April 30, 1972, through summer vacation was granted on April 12, 1972.

cality, especially in view of the scarcity of FM channels in this area of Indiana. In their reply comments, both of the Lafayette licensees support the WCVL counterproposal to assign Channel 280A to Crawfordsville instead of to West Lafayette since they feel that the Crawfordsville area is inadequately served at present by the local 250 watt AM station and the FM station (which normally operates only from September to April) at Crawfordsville and would benefit substantially from having a first "real" FM station.

11. To buttress their contention that Lafayette and West Lafayette are one market the Lafayette opponents of the proposed West Lafayette FM assignment state that, besides being adjacent communities in the same county and in the same urbanized and standard metropolitan statistical area, these cities are not considered separate cities by local residents and that the area of Lafayette and West Lafayette is known as Greater Lafayette; they also point out that these cities are represented by a single Chamber of Commerce, known as the Greater Lafayette Chamber of Commerce; that there is one United Fund Service for both cities; that residents of each city shop and do business in both cities as distance is no factor, and that the banks, chain stores and many other stores have branches and stores in both cities. Although Purdue University, the largest employer in the area, has its campus in West Lafayette, they inform that over half of the University's 6,000 employees live in Lafayette. Tiprad also observes that the proponent of the West Lafayette proposal in attempting to differentiate West Lafayette from Lafayette called attention to the number of growing industries in West Lafayette but that, of the five listed by Jurek, two are located in Lafayette (Lafayette Pipe Company and Lafayette Pharmacal), and there is no listing in either city for a third (Warren Industrial Aggregate Corporation). Tiprad further notes that the proponent, in pointing to the growth of West Lafayette between 1960 and 1970, failed to mention that much of the growth was largely the result of annexation and that between 1968 and 1970 West Lafayette's population declined from 20,100 to 19,957.

12. In taking issue with Jurek's claim that West Lafayette needs a first local FM outlet, the Lafayette licensee opponents contend that he makes no showing that there is any dearth of service by existing stations to either West Lafayette or Lafayette or that his proposed West Lafayette FM assignment is needed to serve any unsatisfied local needs of the community. Tiprad notes that, based on plans revealed in a submitted excerpt in the Lafayette and West Lafayette Journal and Courier on May 23, 1972, and a submitted copy of an official county ordinance, it appears that Jurek intends to locate a studio and transmitter for its proposed West Lafayette FM operation southeast of Lafayette, thus placing the entire city of Lafayette between the station and West Lafayette and providing Lafayette with a better signal than West Lafayette, and to feature country and western music, old hit tunes, and news. It is submitted that such a program service could not possibly serve as a basis for adding an FM channel to an area which is already adequately served by existing media. To show that both communities are well served, examples of programs carried by the existing commercial and educational FM stations in the market are given. With

109-031—73——4

its reply comments, Lafayette Broadcasting also submits letters from the Mayors of Lafayette and West Lafayette and officials of the Greater Lafayette Chamber of Commerce which comment favorably on the local aural broadcast coverage given to news and special events in both cities.

13. As to the economic impact of an additional FM station in the Lafayette-West Lafayette market, Tiprad states that it is already a loss market for FM stations, pointing to the fact that FCC AM–FM Broadcast Financial Data for 1970 (Mimeo No. 78309, released January 6, 1972, Table 20) show that 1970 FM revenues were only $54,160, based on reports from all three Lafayette commercial FM stations. Although no profit and loss figures are published for Lafayette-West Lafayette, it submits that it is inconceivable that that three FM stations could split such revenues profitably. As for its own independent FM station (WXUS), Tiprad states that it has operated at significant losses since its inception but that it now sees some prospect of reversing this pattern. The advent of a fourth FM competitor for existing advertising revenues in this market would, it believes, significantly lessen or extinguish that possibility. Further, it claims that, in the face of reduced revenues which a new station is likely to bring, it is very likely that it would have to curtail the operating hours of Station WXUS, which now operates on a 24-hour a day basis, or give up the wire service (UPI) which it uses in order to reduce costs. Where loss markets, such as Lafayette-West Lafayette for FM stations, are concerned. Tiprad urges that it is no service to the community to further dilute the existing economic base by adding an additional station which can only have an adverse impact upon the existing media. It further claims that the economic base in the Lafayette-West Lafayette market primarily lies in Lafayette and not West Lafayette where there are only seven manufacturing establishments [4], six wholesale trade establishments [5], and only 102 retail trade establishments as compared to nearly five times that number in Lafayette. Both Lafayette opponents also submit that there has been no showing by the West Lafayette proponent as to the ability of West Lafayette to support the proposed FM station.

14. In his reply comments, Jurek urges that it would be contrary to the mandate of Section 307(b) to allocate frequencies in a fair, efficient, and equitable manner to prefer Crawfordsville over West Lafayette for the requested Channel 280A assignment since it is not only considerably smaller than West Lafayette but already has both an existing AM and FM station while West Lafayette has but one AM station. Moreover, he submits that the WCVL proposal for use of the channel has no potential to bring about greater diversification of the ownership of media of mass communication whereas his proposal for use of the channel has that potential.

15. We think it clear from this record that the assignment of Channel 280A to Crawfordsville for a second FM assignment is more in furtherance of the "307(b)" mandate and the public interest than

[4] Source given: 1967 Census of Manufacturers-Area Statistics, Indiana, 15–6, 15–7 (Pt. 1, Vol. III).
[5] Source given: 1967 Census of Business—Wholesale Trade, Indiana, Area Statistics, 16–11 (Vol. IV).

would be the assignment of the channel to West Lafayette for a first such assignment. Taking into account only the size of each community and the number of local aural outlets each has, normally, we might conclude that West Lafayette warranted the proposed assignment over Crawfordsville. However, West Lafayette, albeit an independent community, is an integral part of the Lafayette-West Lafayette metropolitan area and, while it has only one local AM outlet actually located within its boundaries, it receives multiple local aural services also from the seven Lafayette stations (2AM, 4 FM, one of which is an educational station) which serve this metropolitan area. The West Lafayette proponent has made no showing which would demonstrate that West Lafayette has any local programming needs distinct from the rest of the Lafayette-West Lafayette metropolitan area or any which are not or cannot be satisfied by the eight existing aural commercial and educational stations in this market, and the showings of the Lafayette oppenents tend to indicate that it is well served. We do not here assess the economic impact of another FM station in this market upon the existing local stations and overall program service to the public upon the showing made herein, or without an application with a specific proposal before us. Similarly, we make no finding concerning whether West Lafayette itself could provide the principal support for its own commercial FM outlet or could exist and thrive without looking to the larger community of Lafayette for support.

16. On the other hand, this record evidences that Crawfordsville and Montgomery County, due to the technical limitations restricting the coverage of the Crawfordsville AM outlet and the operating problems of the student-managed FM outlet there, is without even one local aural outlet which provides a county-wide, year-round broadcast service. Since Channel 280A is technically feasible for a Crawfordsville assignment, we think its assignment and use there to meet the need for a first year-round local aural service throughout all of Montgomery County represents a better use of the frequency and better serves the public interest than would its assignment and use at West Lafayette for an eighth aural outlet and service in the Lafayette-West Lafayette metropolitan area. We also are not deterred from making this assignment to Crawfordsville because of the claimed lack of potential of the WCVL proposal for implementing our important goals for greater diversification of broadcast ownership and programming sources. While this is a relevant consideration at the application stage, it cannot be realistically assessed in channel assignment proceedings such as this, for while WCVL, the licensee of the existing AM outlet at Crawfordsville, is the only one to indicate an interest in establishing a new FM outlet at Crawfordsville in this proceeding, it is by no means certain that it will be the only applicant or the successful applicant for Channel 280A once it is assigned. In any case, because of a number of overriding public interest considerations, our rules at the present time do not preclude common ownership of AM and FM stations in the same market when otherwise found to be warranted in the public interest.

17. In view of the foregoing, and pursuant to the authority contained in Sections 4(i), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, IT IS ORDERED, That effective April 23, 1973, the FM Table of Assignments, Section 73.202(b) of

the Rules, IS AMENDED, insofar as the community named is concerned, to read as follows:

City	*Channel No.*
Crawfordsville, Indiana	280A, 292A

Canadian concurrence has been obtained for this channel assignment to Crawfordsville which is within 250 miles of the United States-Canadian border.

18. IT IS FURTHER ORDERED, That the request (RM–1822) of Thomas Jurek to assign Channel 280A to West Lafayette, Indiana, IS DENIED.

19. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Renewals of
BROADCAST LICENSES FOR FLORIDA

FEBRUARY 8, 1973.

Staff action of January 31, 1973 reviewing Broadcast licenses for Florida, approved.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON ON FLORIDA RENEWALS

On January 31, 1973, the Commission noted actions to be taken by the staff under delegated authority in connection with disposition of February 1, 1973, broadcast renewal applications for Florida. Commissioner Johnson dissented and has now issued the attached statement.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

Bent upon renewing as many broadcast station licenses as fast as is humanly possible, the Federal Communications Commission once again ignores both the public interest and the dictates of its own rules.

First, the majority—as it does each month—refuses to find fault with the license renewal applications of those stations (this time in the Florida-Puerto Rico-Virgin Islands renewal group) which have failed to broadcast the barest minimum of informational programming: 5% news, 1% public affairs, and 5% "other" non-entertainment programming.

Eleven of the 234 standard broadcast stations [1] and 9 of the 33 TV stations [2] in this group propose to broadcast less than 5% news weekly. Seven standard broadcast stations propose less than 1% public affairs,[3] and 27 standard broadcast stations [4] and 1 TV station [5] will

[1] WAYR, Orange Park, Fla.; WCMQ, Miami, Fla.; WIVV, Vieques, P.R.; WKFE, Yauco, P.R.; WMBM, Miami, Fla.; WNIK, Arecibo, P.R.; WOCN, Miami, Fla.; WPFE, Pensacola, Fla.; WRSG, San German, P.R.; WWBC, Cocoa, Fla.; and WWSD, Monticello, Fla.

[2] WAPA, San Juan, P.R.; WKBM, Caguas, P.R.; WKID, Fort Lauderdale, Fla.; WOLE, Aquadilla, P.R.; WORA, Mayaguez, P.R.; WRIK, Ponce, P.R.; WSUR, Ponce, P.R.; WTOG, St. Petersburg, Fla.; and WXLT, Sarasota, Fla.

[3] WABA, Aquadilla, P.R.; WCID, Juncos, P.R.; WKIZ, Key West, Fla.; WKXY, Sarasota, Fla.; WOKB, Winter Garden, Fla.; WPRA, Mayaguez, P.R.; and WVJP, Caguas, P.R.

[4] WCAI, Ft. Myers, Fla.; WIRK, West Palm Beach, Fla.; WKFE, Yauco, P.R.; WKTZ, Arlington, Fla.; WLEY, Cayey, P.R.; WVJP, Caguas, P.R.; WWBA, St. Petersburg, Fla.; WFUN, South Miami, Fla.; WGGG, Gainesville, Fla.; WKXY, Sarasota, Fla.; WLUZ, Bayamon, P.R.; WNVY, Pensacola, Fla.; WQPD, Lakeland, Fla.; WYOU, Tampa, Fla.; WAPA, San Juan, P.R.; WBJW, Winter Park, Fla.; WBMJ, San Juan, P.R.; WJCM, Sebring, Fla.; WJNO, West Palm Beach, Fla.; WKKO, Cocoa, Fla.; WMBR, Jacksonville, Fla.; WMFJ, Daytona Beach, Fla.; WPUL, Bartow, Fla.; WTRR, Sanford, Fla.; WVOJ, Jacksonville, Fla.; and WVOZ, Carolina, P.R.

[5] WLTV, Miami, Fla.

devote less than 5% of their time to other entertainment programming This is preposterous. *See, e.g.*, my dissenting statement in *Washington Renewals* 1972, —— FCC 2d —— (1972).

Equally troublesome is the majority's refusal to send letters of inquiry to those stations in this renewal group whose employment practices raise serious questions under our equal employment opportunity regulations. The majority approves the Broadcast Bureau's decision not to send such letters to a substantial percentage of those stations which either do not employ minority group members or women or which have shown a decline in the number of such persons employed over the past year. Yet the majority has no intelligent way of knowing—indeed, it would prefer not to know—whether the Bureau's selection process makes any sense.

I suppose, however, that such capriciousness has no truly harmful effect if only because, once the stations which have been queried finally answer our letters of inquiry, the majority is just going to renew their licenses anyhow. *See, e.g.*, *Pennsylvania-Delaware Broadcasting Stations*, 38 F.C.C. 2d 158 (1972).

I dissent.

F.C.C. 73-269

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LICENSEE RESPONSIBILITY TO EXERCISE ADEQUATE CONTROL OVER FOREIGN LANGUAGE PROGRAMS

MEMORANDUM OPINION AND ORDER

(Adopted March 7, 1973; Released March 13, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. The Commission has before it a request of the National Association of Broadcasters (NAB) filed September 8, 1971 in accordance with Section 1.2 of the Rules for a Declaratory Ruling "concerning acceptable modes of station operation in the foreign language programming area."

2. NAB seeks clarification of the Commission's policies regarding licensee knowledge of and control over foreign language programming in light of the Commission's Public Notice of March 30, 1967, 9 RR 2d, 1901, the Commission's rulings in various individual cases, and particularly, the language of the Hearing Examiner in his Initial Decision in *Trans America Broadcasting Corp.*, 33 FCC 2d 606 (1970).

3. In the cited Public Notice we cautioned licensees to maintain adequate controls over foreign language programming, pointing out that in order to exercise such responsibility the licensee must have knowledge of the content of such broadcasts. We pointed out that certain procedures then being followed by some licensees were, in and of themselves, inadequate; i.e., permitting "only persons of established reputation for judgment and integrity to use their facilities; requiring submission in advance of English translations of copies of commercial announcements used in such programs; making recordings of all such broadcasts and retaining them "for future reference." We stated further that,

> Licensee responsibility requires that internal procedures be established and maintained to insure sufficient familiarity with the foreign languages to know what is being broadcast and whether it conforms to the station's policies and to requirements of the Commission's rules.
>
> Failure of licensees to establish and maintain such control over foreign language programming will raise serious questions as to whether the station's operation serves the public interest, convenience and necessity.

4. NAB contrasts this general language with a passage from the Hearing Examiner's Initial Decision in *Trans America*, *supra*, at p. 620:

> In particular, there must be assurance that the licensee will exercise real control over the foreign language programs which are broadcast over its fa-

cilities. This control must encompass a systematic and regular pre-audit of all foreign language programs by a paid employee of the station who has demonstrated capability to understand the language involved.

NAB states that,

Several broadcast licensees have demonstrated to NAB that strict compliance with the FCC directive specified in the *Trans America* case effectively precludes continued broadcast of their foreign language programming and denies service to a significant segment of their audience which looks to this programming as their only real source of broadcast service. Yet, judged by a general standard of licensee responsibility for, and control over, programming, these licensees in the past have made more than scrupulous efforts to insure that their broadcasts in foreign languages are consistent with the public interest.

NAB does not deny "the clear responsibility of all licensees to maintain control over their programming," but it believes that "licensees fully aware and/or fully reminded of their duty with respect to specific subjects of programming are, in turn, fully capable on their own of establishing the appropriate and effective internal procedures demanded." NAB asserts that the propriety of the "self-determination" approach was recognized by the Commission itself in its *Report and Order* in Docket No. 18928, terminating a rule-making proceeding regarding telephone interview programs.

5. Petitioner contends that "several of the controls which the Commission has spelled out are really no controls at all; licensees are thus bound to implement a set of awkward and costly procedures which in fact still don't create any greater protection against programming problems." It asks what insurance there is that a person paid to monitor a foreign language program is any more or less trustworthy than the individual presenting the program, and states that "a thorough background check on a particular performer or announcer and a determination of his reliability is worth more than a routine hiring of someone who simply speaks the language in question" and that "This is all the more true when the performer or announcer is a *paid* station employee himself." NAB further states that the problem of program content "is evidenced more frequently in English programming than in programming presented in a foreign language." Accordingly, NAB believes "the Commission should relegate the matter of control over foreign language programming to the same general status of the well established treatment licensees are expected to give all programming . . ."

6. Specifically, NAB objects to a requirement that all foreign language programming be monitored or pre-audited by a paid employee with a demonstrated capability to understand the language involved. It believes "stations should be permitted to use their own regular employees in foreign language programming without the need for additional monitors." When a foreign language program is presented by a non-employee, NAB asserts use of a monitor should not be required (1) "where a thorough background check of the performing individual(s) has been undertaken, (2) the station is satisfied with his judgment and integrity and has apprised the person of the station's policies and the FCC requirements and (3) has received from the performer a certification that his presentation contains no improper material." If a background check is not possible or the FCC will not accept the above-proposed arrangement, NAB states that "a station

should be permitted to use as a monitor any individual with a demonstrated capability to understand the language involved, *whether he be a paid employee or not*, so long as he is of known good character, has been apprised of the station's policies and the requirements of the Commission's rules, and certifies as to the propriety of the foreign language broadcast which he has monitored." NAB concludes that,

> Overall, a relaxation of the apparent Commission policy on foreign language programming control would return to the air a needed and highly valuable type of program matter upon which so many individuals newly arrived to this country depend.

DISCUSSION

7. We agree that a clarification of our policies in this area is desirable, in view of the apparent (and perhaps understandable) confusion among some licensees as to their responsibilities, and of some of the arguments set forth in NAB's petition—most particularly that as the result of some licensees' understanding of our requirements, broadcast service to persons unfamiliar with the English language has been seriously curtailed. It should be noted initially that we have never held or implied that foreign-language programming should be denied when a demonstrable need for it exists. Thus, the Review Board in *La Fiesta Broadcasting Co.*, 6 FCC 2d 65 (1965), found in a comparative proceeding that an applicant which proposed to broadcast all-Spanish-language programming was entitled to a preference in satisfying demonstrated needs over another which proposed only part-Spanish-language programming, on the basis of a showing of an unfilled need for Spanish-language programming. Moreover, as set forth in our *Programming Policy Statement*, 25 Fed. Reg. 7291, 7295, one of the major elements usually necessary to meet the needs of the community is "Service to Minority Groups," and from the earliest days of regulation the FRC and the FCC have commended broadcasters for foreign language programming designed to serve the needs of minority groups in their communities. *Johnson-Kennedy Radio Corp.*, (WJKS), Docket No. 1156, affirmed *sub nom F.R.C.* v. *Nelson Bros. Co.*, 289 U.S. 266, 270–71 (1933); *United States Broadcasting Corp.*, 2 FCC 208, 233 (1935).

8. The desirability of foreign-language program service does not, however, relieve the broadcaster of his responsibility for his programming, which in turn necessarily depends upon his adoption of reasonable procedures for assuring himself that the programming conforms to his policies and the requirements of the law. We cannot carve out in this area a special exception to licensee responsibility. Rather, our task is to set forth policies and to suggest certain procedures for implementation of them which will substantially assure exercise of licensee responsibility, while at the same time seeking to avoid imposition of unnecessary burdens.

9. We begin by reaffirming the general policy set forth in our Public Notice, *supra*, including our conclusion that certain procedures upon which some licensees were relying for knowledge of and control over foreign language programming appeared, in and of themselves, to be inadequate. For the same reasons, we must reject some of the contentions of the petitioner here: e.g., that a "background check" of a per-

former would assure licensee control and that letting a performer monitor his own program would be as efficacious as arranging for another party to monitor it. Nor do we agree with NAB that our termination of the proposed rule making in Docket No. 18928 is precedent for the requested relief sought. The proposed rules would not have required greater licensee knowledge of or control over what was being broadcast in telephone interview programs; rather, they would have required the licensee to obtain (but not broadcast) the names of persons who called in, and to retain such names, as well as recordings of the programs, for 15 days in order that they might be inspected or auditioned by "interested parties," e.g., persons attacked by anonymous callers.

10. Although we reaffirm our policy statement of 1967, we believe in light of NAB's petition and numerous inquiries the Commission itself has received as to interpretation of that statement, that amplification of it is in order. First, we disavow any requirement that every foreign language broadcast be pre-auditioned by a paid, outside monitor. In many cases, such programs are broadcast by regular employees of the stations—employees who are familiar with statutory requirements and the Commission's rules and policies on program matters, as well as the licensee's own policies, and who have demonstrated such knowledge to the licensee as well as their own responsibility. This does not mean, of course, that the licensee can disclaim responsibility for the content of such broadcasts by employees any more than he can disclaim responsibility for violations by his English-language announcers.

11. Moreover, we think that, so long as the licensee recognizes his responsibility for overall adherence to the statutes, rules and Commission policies, and has fully familiarized those using his facilities with them and station policies, the licensee could conclude that he need not engage an outside monitor to listen to and report on every broadcast by a non-employee in a language with which no employee of the licensee is familiar.[1] Unless the licensee has reason to suspect that the non-employee is violating the requirements of the licensee and the Commission, he may, for example, arrange for an outside monitor to listen to, and report to the licensee on such broadcasts on a spot basis, choosing broadcasts at random—for example, one or more broadcasts a week of a daily program and one or more a month of a weekly program. It is, of course, assumed that the outside monitor has been made familiar with the licensee's policies and the Commission's requirements with respect to programming; e.g., obscenity, personal attacks, the fairness doctrine, broadcast of false or misleading advertising, lottery information, fraudulent schemes, equal opportunities for political candidates, the licensee's limitations on total commercial content, sponsorship identification. On the other hand, a licensee could reasonably conclude that more stringent precautions are required to carry out his public trust.

12. As for NAB's contention that there is no assurance that a person paid to monitor a program is any more trustworthy than the individual presenting the program, we believe it is obvious that a third

[1] If any responsible employee of the licensee understands the language and monitors the programs of non-employees, there obviously is no need to engage outside monitors.

party, independent of the performer and responsible only to the licensee, is likely to be a more reliable source of information regarding violations than the performer himself. Many foreign-language programs are broadcast by independent time-brokers, who buy time in blocks from the station, sell their own advertising, and produce their own programs. Thus, there may be a basic conflict of interest between the time-broker's tendency to increase his income by accepting false or misleading commercials, for example, and his duty to observe the Commission's and the licensee's policies. Similarly, the Commission has discovered over the years many instances in which time-brokers were devoting more of their broadcast time to commercials than the licensee's policy permitted; also, instances in which brokers have sold time to competing political candidates at different rates, or at higher than regular commercial rates, in violation of the statute and the Commission's rules. Thus, mere reliance on a foreign-language broadcaster who is not a station employee to report his own violations to the licensee obviously would not be likely to assure licensee exercise of his responsibilities.

13. NAB also apparently objects to a condition that outside monitors be paid. We will not lay down a flat requirement that the monitors be paid, but it has been our experience in many cases that where monitors are not paid by the licensee they do not regularly monitor and report on the programs; in fact, in most cases coming to our attention, the device of unpaid, voluntary monitors has proved to be a sham. We do not rule, however, that there may not be circumstances in which an unpaid monitor would serve as efficiently and responsibly as one who is paid. We merely point out that it is the licensee's responsibility to assure that his and the Commission's requirements are complied with in his programming, and that if unpaid monitors are used, the licensee should take special precautions to assure himself that his purpose in engaging a monitor is being fulfilled.

14. In the foregoing paragraphs, we have suggested some guidelines for the licensee, and have tried to make clear that although some procedures have proven inadequate for that purpose, we do not intend to lay down any rigid formula for achievement of it. It is clear that a licensee cannot insure operation in the public interest unless he has a familiarity with the content of his programs; for example, he cannot provide suitable access to ideas, opinions and information of public importance if he has no such familiarity, nor can he comply with the fairness doctrine, personal attack rules, or any of the other requirements of the statute or the Commission's rules and policies. However, as we stated in *Wolfe Broadcasting Corp.*, 32 FCC 2d 761, 763 (1971):

> [W]e believe it would be administratively impossible to determine for each licensee who presents foreign language programming, whether or not the internal procedures he has implemented to exercise proper control are "required," unnecessarily stringent, or "reasonable" in light of all the factors involved. Certainly the individual licensee is in a far better position than we to assess his problems and requirements in this area. Again, we state that, absent substantial extrinsic evidence of intentional abuse, our only legitimate concern can be whether the procedures followed allow a broadcaster to maintain sufficient control over his programming.

15. Thus, while again reminding licensees of their responsibility in this matter and pointing out some methods of exercising this respon-

sibility which have in our experience proved effective and others which have proved ineffective, we still leave to the licensee the determination of what particular procedures are in his case necessary to the exercise of proper control over programming.

16. Accordingly, the request of the National Association of Broadcasters is to the extent reflected above GRANTED and, in certain respects, as also indicated above, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-198

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of LEE GILBERT, JAMES L. PUTBRESE, AND KEITH E. PUTBRESE, ASSIGNORS and WSUF BROADCASTING CO., INC., ASSIGNEE For Transfer of Control of Adams Getschal Broadcasting Co., Inc., Licensee of Station WSUF, Patchogue, N.Y.	BTC-7046

FEBRUARY 20, 1973.

Mr. IRA C. WOLPERT,
Deckelbaum and Wolpert,
1140 Connecticut Avenue,
Washington, D.C.

DEAR MR. WOLPERT: On December 26, 1972 an application was filed with the Commission to transfer control of Adams Getschal Broadcasting Company, Inc., the license of Station WSUF, Patchogue, New York, from Lee Gilbert, James L. Putbrese and Keith E. Putbrese to WSUF Broadcasting Company, Inc. (BTC-7046). That application was accepted for filing on January 18, 1973. Pursuant to Section 1.580(i) of the Commission's rules any Petition to Deny the application must be filed by February 20, 1973.

On February 12, 1973 you, acting as counsel for Ziger, Reznick and Fedder, an accounting firm and creditor of the above-named licensee, filed a letter with the Commission asking for "an extension of time of 30 days from the date that the promised balance sheet is submitted to the Commission to file a Petition to Deny the above-referenced application." In support of your request for the extension of time you allege:

(1) We have undertaken a review of the Commission's files, and are unable to conclude that as promised at Exhibit D of the transferor's portion of the application, a balance sheet has been submitted to the Commission. It is imperative that interested parties have an opportunity to review that balance sheet in order that a final evaluation can be undertaken as to the position this transfer will leave them in.

(2) Further, at paragraph 6 of the Agreement, it states that the licensee corporation was to deliver to WSUF Broadcasting Company, Inc., a schedule of all known debts, obligations and accounts payable. Clearly, without a review of that schedule, it will be impossible for creditors to evaluate their situation or for the Commission to make a final determination as to the financial qualification of the transferees, since without that schedule, their obligations will not be clear.

In view of the fact that the above-mentioned transfer application was filed with the Commission in an incomplete manner, thereby preventing your full review of the application, and since the necessary amendment was placed on public file on February 13, 1973, thereby allowing

you only 7 days to study this filing and to prepare your item, you are hereby granted an extension of time to and including ten (10) days from the date of this correspondence.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73-270

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF ELI DANIELS AND HARRY DANIELS, D.B.A. HEART OF THE BLACK HILLS STATION, LICENSEE OF RADIO STATION KDSJ, DEADWOOD, S. DAK.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted March 7, 1973; Released March 12, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has under consideration (1) its Notice of Apparent Liability dated August 18, 1971, addressed to Eli Daniels and Harry Daniels, d/b/a Heart of the Black Hills Station, licensee of Radio Station KDSJ, Deadwood, South Dakota and (2) the response of the licensee dated September 24, 1971 to the Notice of Apparent Liability.

2. The Notice of Apparent Liability for forfeiture was issued in this proceeding in the amount of one thousand dollars ($1,000) for violation of the terms of the station authorization and Section 73.87 of the Commission's Rules, for operation from 6:00 a.m. local time with non-directional daytime mode and power, prior to the sunrise times specified in the station license, on November 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 16, 17, and 18, 1970, and also for violation of Section 73.111(a) of the Commission's Rules for failure to keep maintenance logs from October 10, 1970 to November 20, 1970.[1]

3. Licensee responded to the Notice of Apparent Liability by letter of September 24, 1971 requesting that the forfeiture be rescinded. As the basis for this request, licensee, in substance, contends that it did not violate Section 73.87 of the Commission's Rules or the terms of the station authorization for the reason that a proper interpretation of the station's license and the 1968 certificate of renewal permitted pre-sunrise operation with daytime non-directional mode and daytime power of 1,000 watts. In support of this claim, licensee argues as follows: (a) When licensee's 1965–1968 station license was granted on November 19, 1965, Section 73.87 of the Rules then permitted transmissions of programs between 4:00 a.m. local time and local sunrise with a station's authorized daytime facilities; (b) the 1965–1968 station license was renewed on March 29, 1968 for the period ending April 1, 1971 by FCC Form 360; (c) the Form 360 referenced the

[1] The average hour of local sunrise specified in the 1965–1968 station license for November, 1970 was 6:45 a.m. Mountain Standard Time.

license ending April 1, 1968 as the license being renewed and further stated, in part:

This certificate serves as a renewal of the reference radio station license on the same conditions and in accordance with the same provisions for the term ending April 1, 1971.

and (d) the "pre-sunrise conditions" were changed by the Commission without notification to KDSJ; therefore, operation prior to sunrise was permitted by the 1968–1971 license renewal. Consequently, licensee claims it has committed no violation of the terms of its station license or Section 73.87 of the Rules.

4. The basic instrument of authorization (i.e., the 1965–1968 station license) provides in its introductory statement that it is "Subject to the provisions of the Communications Act of 1934, and subsequent Acts, and Treaties, and Commission Rules made thereunder, and further subject to conditions set forth in this licensee . . ." It is to be noted that the conditions are those "set forth in this license . . . ." Neither the KDSJ 1965–1968 station license, nor the 1968 renewal thereof, set forth any conditions permitting the operation of the station with the non-directional daytime mode prior to the average hours of local sunrise specified in the license. Presunrise operation must therefore be governed by the Commission's Rules to which the station license is expressly made subject.

5. Since 1965 several changes have been made in the Rules pertaining to presunrise operation. Section 73.99 of the Rules was adopted, effective August 15, 1967, requiring that a Presunrise Service Authority (PSA) be obtained from the Commission by a Class III station licensee for permission to operate with the daytime antenna system until local sunrise. Section 73.99 also provided that permissible power for a Class III station, to be specified in the PSA, shall not exceed 500 watts.[2] At the same time, effective August 15, 1967, Section 73.87 of the Rules was amended to the effect that no standard broadcast station shall operate at times, or with modes or powers, other than those specified in the basic instrument of authorization (the station license) unless the licensee obtains a Presunrise Service Authority permitting deviation therefrom, pursuant to Section 73.99 of the Rules. The licensee here never requested a PSA from the Commission.

6. It thus appears that licensee has operated during presunrise hours repeatedly, without regard to the above-mentioned changes in the Rules, in violation of Section 73.87 of the Rules and the terms of the station license on the dates heretofore mentioned. Licensees are chargeable with knowledge of the rules governing the station for which they are licensed. *KIRO, Inc.*, 19 FCC 2d 641 (1969), 17 RR 2d 315. Oversight or failure to be aware of the Commission's requirements will not excuse a licensee from its obligation to operate its station in compliance with the terms of the authorization and the Commission's Rules. *Empire Broadcasting Corp.*, 25 FCC 2d 68 (1970), 19 RR 2d 1191.

7. In connection with the response to the Notice of Apparent Liability for forfeiture, licensee submitted copies of the "transmitter" logs (operating logs) for KDSJ for the period from October 10,

[2] KDSJ is a Class III station, KDSJ could not have obtained a PSA for power in excess of 500 watts in the non-directional mode from 6:00 a.m. to local sunrise.

1970 to November 20, 1970, in support of licensee's statement that the entries required to be made in the maintenance log by Sections 73.111 (a) and 73.114 of the Rules were in fact entered in the KDSJ "transmitter" logs. An examination of the submitted logs reveals this statement to be true. In a former reply, licensee stated that separate operating logs and maintenance logs would be kept thereafter. Under these circumstances, we have determined to remit liability for forfeiture for violation of Section 73.111(a) of the Rules and reduce the amount of the forfeiture to eight hundred dollars ($800).

8. Since we have determined that licensee's violations of Section 73.87 of the Commission's Rules were repeated, we find it unnecessary to make an additional determination as to willfulness of violations. *Paul A. Stewart*, FCC 63–411, 25 RR 375 (1963).

9. In view of the foregoing, IT IS ORDERED, That Eli Daniels and Harry Daniels, d/b/a Heart of the Black Hills Station, licensee of Radio Station KDSJ, Deadwood, South Dakota, FORFEIT to the United States the sum of eight hundred dollars ($800) for repeated failure to observe the terms of the station authorization and Section 73.87 of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Treasurer of the United States. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules, an application for mitigation or remission of forfeiture may be filed within thirty (30) days of the date of receipt of this Memorandum Opinion and Order.

10. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to Eli Daniels and Harry Daniels, d/b/a Heart of the Black Hills Station, licensee of Radio Station KDSJ, Deadwood, South Dakota.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

109–031—73——5

F.C.C. 73-173

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by ILLINOIS VALLEY COMMUNICATIONS, INC., PEORIA, ILL. For Tax Certificate Re Assignment of License	BALH-1579

FEBRUARY 14, 1973.

HENRY P. SLANE,
President, Peoria Journal Star, Illinois Valley Communications, Inc., 1 News Plaza, Peoria, Ill.

DEAR MR. SLANE: This refers to your request for a tax certificate pursuant to Section 1071 of the Internal Revenue Code (26 U.S.C. Section 1071). The former licensee of WSWT(FM), Peoria, Illinois is Illinois Valley Communications, Inc., a wholly owned subsidiary of The Peoria Journal Star, Inc., publisher of the Peoria Journal Star, the only daily newspaper in Peoria. An application for assignment of license of WSWT(FM) to Mid-America Media, Inc. (BALH-1579) was granted February 15, 1972. You state that the reason for the sale was to break up the newspaper broadcast station combination based on the Commission's Further Notice of Proposed Rulemaking in Docket No. 18110, 22 FCC 2d 339 (1970), which proposed rules limiting a party to one or more daily newspapers, or one TV station or one AM-FM combination in the same market. You argue that, "The adoption of the 'Further Notice' for all practical purposes constitutes a new tentative FCC policy, and that a tax certificate is therefore warranted."

Your request must be denied because it is outside the basic statutory provision which authorizes tax certificates. Section 1071 of the Internal Revenue Code provides in pertinent part as follows: "(a) Nonrecognition of gain or loss—if the sale or exchange of property including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate *to effectuate a change in policy of, or adoption of a new policy by,* the Commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of Section 1033." (Emphasis added)

While it is true that our Further Notice does institute an inquiry into the possible adoption of Rules limiting broadcast/newspaper ownership in the same market, this, standing alone, does not constitute a change in policy or an adoption of a new policy. Our Further Notice did not require divestiture of present holdings, impose any requirements on the transfer of present newspaper-broadcasting combinations, or prevent the formation of new newspaper-broadcasting combina-

tions. See for example, *United Broadcasting Inc.* 36 FCC 2d 695 (1972) where we permitted the publisher of a newspaper in Festus, Missouri to acquire control of a broadcast facility in the same city. Our ruling here is therefore analagous to and consistent with our earlier decision denying RKO General's request for a declaratory ruling that tax certificates would be issued for separating commonly owned AM and FM facilities in the same market. 36 FCC 2d 123 (1972).

While separation of ownership of AM and FM stations in the same market and of newspapers and broadcasting stations in the same market contributes to diversification of control over media of mass communications, in neither case has there been a change in the Commission's present policies which permit such combinations.

Your request for a tax certificate is hereby denied.

Commissioner Johnson concurring in the result. Commissioner Reid absent.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

39 F.C.C. 2d

109-031—73——6

F.C.C. 73-259

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In Re Application of
INDEPENDENT MUSIC BROADCASTERS, INC.
(WYOR), CORAL GABLES, FLA.
Has: 105.1, #286; 160 kW; 190 ft.
Req.: 105.1, #286; 100 kW(H); 100 kW(V); 904 ft.
For Construction Permit

MEMORANDUM OPINION AND ORDER

(Adopted March 7, 1973; Released March 9, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT; COMMISSIONER WILEY CONCURRING IN THE RESULT.

1. The Commission has for consideration the captioned application for a construction permit for an existing station to change transmitter site and facilities, and a request for waiver of section 73.213(f)(1) of the Commission's rules for acceptance of the application.

2. The transmitting site proposed, approximately 20.5 miles north-northeast of the present site, would create a short-spacing of 11.7 miles with station WEAT-FM, West Palm Beach, Florida.

3. In support of the request for waiver, WYOR alleges that (1) the area and population within the 1 mV/m contour would be increased by 1,997 square miles and 448,637 persons, respectively; (2) the present low height of the WYOR antenna has resulted in numerous pockets of sub-standard reception which can be eliminated by use of a high antenna; (3) although no "antenna farm" has been established, the fact that there are tall towers at the site constitutes a *de facto* "antenna farm"; (4) more than equivalent protection would be afforded to WEAT-FM; (5) airspace requirements in the area seriously affect selection of a suitable transmitter site and limit coverage; (6) severe limited coverage areas will result to those area stations which cannot use tall towers at the proposed site; and (7) for WYOR to maintain its competitive viability with other area stations it must increase its antenna height.

4. It is recognized that a higher antenna would help eliminate shadowing and sub-standard reception areas; however, it has not been demonstrated that the only site to which the antenna for WYOR, a station licensed to Coral Gables, a community south and southwest of Miami, can be moved is one approximately 20.5 miles from its present site, and well to the north of Miami. Furthermore, WYOR does not claim that its present service to Coral Gables is substandard. Although data presented with the application indicates that no substantial increase in height can be achieved at the present site because

of zoning considerations, other data also in the application would indicate that the FAA might not object to a tower not over 549 feet above mean sea level in a 17-mile semi-circle south of the present WYOR site.[1]

5. Although equivalent protection is not ordinarily acceptable as a justification for a sub-standard spacing, our rules do provide an exception when the antenna is proposed to be located in a specified "antenna farm" at short-spacing, and no reasonable alternative is available because of aeronautical hazard problems [section 73.209(c)]. In adopting this rule, however, the Commission emphasized its intention to maintain mileage separation requirements, and to allow short-spaced assignments only ". . . if extraordinary reasons of aeronautical safety indicated that a particular antenna structure should be located within the antenna farm. . . ." Even then, the Commission added, "Such an action will not be considered as a justification for the filing of other requests for short separations." *Antenna Farm Areas*, 8 FCC 2d 559, 566 (1967). Here, not only has the proposed site not been designated as an "antenna farm" under our rules, but, as noted above, there are obviously sites available, including WYOR's present site, which would meet all mileage separations and not raise aeronautical safety problems. Under these circumstances, a grant of the requested waiver, creating a new short-spacing of the magnitude involved would be violative of established allocation principles, and cannot be condoned.

6. The applicant's contentions concerning its competitive position vis-à-vis other stations in the area are not sufficient to justify grant of the requested waiver. The proposed operation would not result in service to unserved or underserved areas, but would duplicate the service areas of six FM stations already located in the Hollywood area. We also note that station WEAT–FM, the station which would become short-spaced by the WYOR move, tried on two occasions to use its WEAT–TV transmitter site for its proposed FM station and thereby create a short-spacing of 5.5 miles with WYOR. Both requests were denied by the Commission.[2] It would appear inconsistent to now permit the station which would have been short-spaced to create a greater short-spacing to the station which previously proposed a lesser short-spacing.

7. WYOR also argues that if it were already short-spaced to WEAT–FM, it could be located at its proposed site with maximum facilities under section 73.213(f)(2)(i) of our rules,[3] and that, therefore, it should not be prevented from moving because it is not presently short-spaced. Under WYOR's theory, no station would have to observe the prescribed mileage separation requirements for second or third adjacent channels. That theory is not consistent with the reasoning underlying section 73.213. The rationale for the exceptions contained therein is that some flexibility had to be allowed stations which

[1] WYOR concedes also that a tower meeting mileage separations could be located in the vicinity of the tower of television station WCIX–TV, channel 6, Miami. This tower is located near Homestead, Florida, south of Coral Gables and is 1,049 feet above mean sea level.

[2] *Gardens Broadcasting Co.*, 7 FCC 2d 555 (1967); 14 FCC 2d 165 (1968).

[3] Section 73.213(f)(2)(1) provides that where the short separation is second or third adjacent channel stations already short-spaced when the FM table of assignments was adopted may operate with maximum facilities regardless of spacing.

were already short-spaced when the Commission adopted its present mileage separation standards. To extend it to include stations simply wishing to improve coverage for competitive or other reasons as suggested by WYOR would essentially destroy the mileage separation standards prescribed by the Commission, and would result ultimately in substantial increases in interference in the FM broadcast service generally. For example, if we were to grant the waiver requested here, it would then follow that WEAT-FM should be allowed the move south previously denied it. The result would be a substantial increase in interference between the two stations over that which now exists.

8. In view of the foregoing, it does not appear that any of the reasons advanced by WYOR are sufficiently compelling to warrant a waiver of the spacing requirements. Since WYOR has failed to allege facts sufficient, if true, to warrant waiver, a hearing on the request is not required. *U.S.* v. *Storer Broadcasting Co.*, 351 U.S. 192, 13 R.R. 2161 (1956).

9. Accordingly, IT IS ORDERED, That the request of Independent Music Broadcasters, Incorporated, for waiver of section 73.213(f)(1) of the Commission's rules IS DENIED, and that the above-captioned application IS RETURNED to the applicant.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-268

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF METRO COMMUNICATIONS, INC., LICENSEE OF RADIO STATION KDEO, EL CAJON, CALIF.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted March 7, 1973; Released March 12, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has under consideration (1) its Notice of Apparent Liability for forfeiture of $3,000 dated April 5, 1972 and (2) licensee's response to the Notice of Apparent Liability dated April 21, 1972.

2. The Notice of Apparent Liability in this proceeding was issued for violation of Section 317 of the Communications Act of 1934, as amended, and Section 73.119 of the Commission's Rules, in that Station KDEO broadcast commercial announcements daily during the period between April 12, 1971 and April 20, 1971 and three times on April 20, 1971 which lacked the required sponsorship identification. A typical text of the announcements read as follows:

PSSHHTT-KABALONK. Welcome aboard . . . this is your bus speaking! TIDDILYUPBINGGING. We're goin' sight-seein'! (SOUNDS OF FAST DOOR CLOSE & STARTING UP) PSSHHT-BLUNK-VAROOOM. And, whadda-we gonna see, y'say? Me! Wearing words of wisdom from bumper to bumper! Like "Every Glendale has a silver lining." Beautiful! An' "Glendale makes the heart grow fonder." Heart! That's me all over! PSSHHTT-VRUMM. Hey, lady! BEEP-BEEP. Somethin' *beautiful* is comin' you way! VROOM. Me!

3. The licensee's response to the Notice of Apparent Liability states that any type of forfeiture is unwarranted for the reasons that (1) the advertisements were received from one of the most reputable of agencies in the business, (2) the word "Glendale" appeared in the commercial announcements and was synonomous with Glendale Federal Savings and Loan Association in southern California and therefore sufficient as sponsor identification, and (3) other media were carrying the same commercials.

4. That the copy was received from a reputable agency and that other broadcasters and other media carried the commercials provide no justification for failure of a licensee to comply with the Communications Act or the Commission's Rules. Each licensee is expected to know and comply with the statute and the Rules. As to the sufficiency of the use of the word "Glendale" in the announcements as a proper identification of sponsorship, the facts and circumstances lead to the conclusion that the word "Glendale" itself was not appropriate identification. The advertising agency submitted the text of the announcements on condi-

tion that no further sponsorship identification be included; in fact, the agency designated the announcements as "teasers" on the submitted texts, which itself denotes intentional insufficient identification, and the station itself, after broadcasting the announcements above specified and after further thought was given by management to the question of sufficiency, caused the text to be supplemented by adding a "tag line" naming the Glendale Federal Savings and Loan as the sponsor. In fact, in response to a Commission inquiry prior to issuance of the Notice of Apparent Liability the licensee stated:

We admit this was an error in judgment on our part in determining that the word "Glendale" by itself was enough to identify the sponsor.

5. Although licensee's response does not expressly urge that the sponsorship identification in this case falls within the exception permitted by Section 73.119(g) of the Commission's Rules [1] by contending that the use of the word "Glendale" was sufficient, licensee appears to be attempting to bring the announcement within the exception. However, Section 73.119(g) clearly is not applicable since the public could not have been aware that a commercial product or service was advertised or that the sponsor's corporation or trade name, or the name of sponsor's product, was even mentioned. It appears that the announcements were intended to arouse curiosity rather than to provide appropriate sponsorship information.

6. The licensee does not deny making the broadcasts described in the Notice of Apparent Liability on the dates and at times therein indicated. Accordingly, we find that in broadcasting these commercial announcements the licensee failed to make the proper announcements of sponsorship as required by Section 317 of the Act and Section 73.119(a) of the Commission's Rules, and we are not persuaded to grant its request for remission of the forfeiture.

7. In view of the foregoing, IT IS ORDERED, That Metro Communications, Inc., licensee of Radio Station KDEO, El Cajon, California FORFEIT to the United States the sum of three thousand dollars ($3,000) for repeatedly failing to abide by the provisions of Section 317 of the Communications Act of 1934, as amended, and Section 73.119(a) of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Treasurer of the United States. Pursuant to Section 504(b) of the Communications Act of 1934, as amended and Section 1.621 of the Commission's Rules, an application for mitigation or remission may be filed within thirty (30) days from the date of receipt of this Memorandum Opinion and Order.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to Metro Communications, Inc., licensee of Radio Station KDEO, El Cajon, California.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

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[1] Section 73.119(g) reads as follows:
"In the case of broadcast matter advertising commercial products or service, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, *when it is clear that the name of the product constitutes a sponsorship identification*, shall be deemed sufficient for the purpose of this Section and only one such announcement need be made at any time during the court of the program." (Emphasis added.)

F.C.C. 73-224

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of PACIFIC BROADCASTING CORP., AGANA, GUAM For Renewal of Licenses of Stations KUAM and KUAM-TV	File No. BR-2933 and File No. BRCT-296

FEBRUARY 27, 1973.

PACIFIC BROADCASTING CORP.,
Stations KUAM, KUAM-FM, and KUAM-TV,
Post Office Box 368,
Agana, Guam

GENTLEMEN: The Commission has under consideration (1) your applications for renewal of the licenses of Radio Station KUAM (File No. BR-2933), and Television Station KUAM-TV (File No. BRCT-296), filed November 3, 1971, and (2) eight Official Notices of Violation issued to you for violations found in the inspections of the AM station on June 20, 1966, March 31, 1970, and April 15, 1972; inspections of the FM station on March 18, 1970 and April 26, 1972; and inspections of the TV station on June 20, 1966, March 23, 1970, and April 15, 1972, and (3) correspondence received from you in regard to these Notices.

The licenses for these three stations were last renewed on January 30, 1969, for regular terms ending February 1, 1972.

I. THE AM STATION

The inspection of this station which occurred on March 31, 1970, during the regular license period, January 30, 1969–February 1, 1972, indicated the following violations of the Communications Act of 1934, as amended, and the Rules of the Commission, among others: [1]

Section 301 of the Act
Installation and operation of auxiliary transmitter without license or other authority.

Section 318 of the Act or Section 73.93(b)
Operating with unlicensed operators in actual charge of the transmitter (10 days).

Section 73.111(a)
Failure to sign operating logs on and off duty (3 days).

Section 73.52(a)
Operating with power consistently below licensed power and permitted tolerance (6 days).

Section 73.55
Percentage of modulation not being at least 85% on peaks of frequent recurrence.

[1] Citations are to the Rules of the Commission unless otherwise indicated.

Section 73.60
Operation with erratic frequency monitor.
73.1201(a)
Failure to announce station identification.
73.114(b)
Failure to sign operating log for entries concerning transmitter inspections (5 days).
73.112(a)(2)(i)
Failure to make entries in program logs showing announcements of sponsorship (30 days).

All of the above-listed violations of Rules found in the 1970 inspection of this station were also found in the 1966 inspection of this station.

Even after action on your renewal application for this station had been deferred in February, 1972, the subsequent inspection of this station in April, 1972 indicated that the following violations, among others, occurred during March and April, 1972:

Section 318 of the Act
Operation by an unlicensed operator.
Section 73.113(a)(3)
Failure to enter transmitter and frequency readings in the operating log (3 days).
Section 73.111(a)
Failure to sign operating logs to indicate the operator on duty (5 days).
Section 73.114(b)
Omission of maintenance log entries to show daily transmitter inspections (5 days).
Section 73.111(a)
Failure to sign on and/or off on program log.
Sections 73.50(b), 73.55, and 73.56(a)
Modulation monitor inaccurate or not adjusted.
Section 73.114(a)(1)(i)
Omission of weekly entries in maintenance logs of readings and calibration of remote and regular ammeters (6 weeks).
Section 73.111(i)
Falsified entries in program logs (3 days).

II. THE FM STATION

The inspection of this station which occurred on March 18, 1970 during the regular license period, January 30, 1969–February 1, 1972, indicated these violations of the Commission's Rules:

Section 73.265(b)
Operation of transmitter by a third-class operator with license not endorsed for broadcast (7 days).
Section 73.281(a)
Failure to sign operating logs on and off duty (9 days). No operating log maintained on one day.
Section 73.283(a)(3)
Omission of entries for half-hour transmitter and frequency monitor readings in operating logs (11 days).
Section 73.282(a)(1)(i)
Omission of all entries in program logs showing programs by name or title, times of commencement, and classifications as to source and type (30 days).

Section 73.283 (a) (1)

No entries of time for carrier off (10 days).

After action on renewal of license for this station had been deferred, the inspection of April 26, 1972 of this station indicated that the following violations of the Commission's Rules, among other, occurred in March and April, 1972:

Section 73.281 (a)

No signatures in operating logs and program logs to show duty operators (4 days).

Section 73.283 (a) (3)

Entries of half-hourly readings omitted from operating logs (3 days).

Section 73.275 (a) (4)

Remote control system not functioning to properly perform required functions.

Section 73.282 (a) (1) (ii)

Falsification of an entry in the program log (1 day).

III. THE TV STATION

The inspection of this station which occurred on March 23, 1970, during the regular license period, January 30, 1969–February 1, 1972, indicated the following violations of the Commission's Rules:

Section 73.670 (a) (1) (ii)

No entries in the program logs showing times that programs terminate (30 days).

Section 73.670 (a) (2) (iii)

No entries in program logs showing that appropriate announcements of sponsorship were made (30 days).

Section 73.669 (a)

Program logs not signed on or not signed off (10 days).

After action on renewal of license for this station had been deferred, the April 15, 1972 inspection indicated that the following violations of the Communications Act of 1934, as amended, and the Commission's Rules occurred during March and April, 1972:

Section 318 of the Act; Section 73.661

Operator who held no license issued by the Commission was in charge of transmitter.

Section 73.669 (a)

No signatures on operating log to show the operator in charge of transmitter.

Section 73.687 (b) (7); 73.691 (a)

Defective modulation/frequency monitor.

The 1966 inspection of this station indicates that the principal violations involved omission of entries and signatures in the program and operating logs for substantial periods of time, and, even more importantly, operation of the station with unlicensed or improperly licensed operators in charge of the transmitter during the majority of the time that the transmitter was operated.

In addition, the 1972 inspection of the AM station revealed that the operating logs for the AM station were falsified during parts of the

following days in 1972: March 11–12, 18–19, 22–23, 23–24, 25–26, 26–27, 27–28, 30–31, and April 1–2, 3–4, 4–5.

The 1972 inspection of the FM station revealed that the operating logs of the FM station were falsified during parts of the following days in 1972: March 2–3, 3–4, 6–7, 7–8, 10–11, 11–12, 14–15, 15–16, and 17–18, and April 12–13.

The 1972 inspection of the TV station revealed that the operating logs of the TV station were falsified during parts of the following days: March 17–18, 18–19, 19–20, 20–21, 21–22, 22–23, and April 1–2, 2–3, 6–7, and 7–8.

A review of your replies to the Notices of Violation issued in 1966, 1970 and 1972 in the case of the AM and TV stations and in 1970 and 1972 in the case of the FM station reveals that many violations were found to have been repeated after your receipt of prior notice of violation, and that in many instances you took corrective action only after violations were revealed during inspections. You have responded to a number of violation notices by alleging the difficulty of obtaining qualified operators and of complying with the Rules. However, the seriousness of the violations, the large number discovered, the fact that they have been found in repeated inspections and the fact that some appear to have been willful indicate a continuing pattern of failure on your part to comply with the provisions of the Communications Act and the Rules.

In view of the foregoing, the Commission has been unable to determine that the renewal of the licenses for KUAM, KUAM–FM, and KUAM–TV for a full three year term would serve the public interest, convenience, and necessity. In order to provide an earlier opportunity for review of the operations of these stations, it is, therefore, granting renewal of the licenses for KUAM, KUAM–FM, and KUAM–TV for a term ending February 1, 1974. During that term, the Commission expects that the licensee will take all necessary measures to preclude recurrence of the conditions noted herein.

Commissioner Johnson concurring in the result.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
RADIO STATION WFAI, FAYETTEVILLE, N.C.
Concerning Personal Attack Re National
Association of Government Employees

FEBRUARY 22, 1973.

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES and Mr. KENNETH T. LYONS,
c/o Mr. James vanR. Springer, 800 Federal Bar Building West, Washington, D.C.

GENTLEMEN: This letter will refer to the November 16, 1972 complaint filed by you against Radio Station WFAI, Fayetteville, North Carolina.

You allege that a personal attack occurred during the presentation of a controversial issue of public importance and the licensee failed to make "an offer of a reasonable opportunity to respond within a reasonable time"; that prior to the union representation election of November 1, 1972, at Fort Bragg, North Carolina between the National Association of Government Employees (NAGE), and the incumbent union, the American Federation of Government Employees (AFGE), WFAI broadcast certain ads paid for by AFGE which attacked the honesty, integrity and like personal qualities of NAGE and its President, Kenneth T. Lyons; and that the advertisements, which were broadcast hourly between 7 p.m. and 12 p.m. on October 31, 1972, once between 4 a.m. and 5 a.m., and twice between 6 a.m. and 7 a.m. on November 1, 1972, stated the following:

Kenneth T. Lyons, President of the National Association of Government Employees, whose union is attempting to represent the non-appropriated funds employees at Fort Bragg, was accused by national syndicated columnist Jack Anderson of having Mafia contacts. Kenneth Lyons is also being investigated for misuse of Union funds according to Jack Anderson's column in the Tuesday Fayetteville Observer. The AFGE urges all Fort Bragg employees to read Jack Anderson's column in the Fayetteville Observer on page 4a. Now that you know the truth . . . vote for honesty, and integrity . . . vote AFGE AFL–CIO. Paid for by the American Federation of Government Employees.

You further state that Mr. Harry Breen, Vice-President of NAGE, heard the 8 p.m. October 31 ad and called the station to request the purchase of time to rebut the AFGE charges before the election the following day (November 1); that the station employee who took the call, after conferring with the station manager, Mr. Howard Wilcox, by telephone, told Mr. Breen that the requested time would not be made available, but that Mr. Wilcox would discuss the matter the following day at 9:00 a.m.; that although Mr. Breen knew that it would be impossible to rebut the ads on the day of the election, he and Mr.

Ronald Hogge met with Mr. Wilcox at the agreed time; that at the meeting Mr. Wilcox stated it was the station's policy not to accept advertising after the close of business at 5 p.m., and since Mr. Breen's request came at 8 p.m. no time could have been sold; and that on November 3, 1972, NAGE and Mr. Lyons received a letter from WFAI which acknowledged a personal attack had occurred and offered to provide the parties an opportunity to respond. You further contend that the station willfully ignored Mr. Breen's request, inasmuch as it was aware that the AFGE ads were a direct result of Jack Anderson's column of October 31, 1972 in the Fayetteville Observer.

The station responded to a November 20, 1972 Commission inquiry on November 28, 1972, stating that it was "doubtful" whether the Union election at Fort Bragg was a controversial issue of public importance or for that matter whether the character of Mr. Lyons was of public importance in Fayetteville, North Carolina and the surrounding area; that the election was not a political election which involved the city electorate but merely union members at Fort Bragg, which amounted to only a small percentage of the station's potential listening audience; that the controversy was a private one between competing unions and, although admittedly of utmost importance to the respective unions and Mr. Lyons, it was not a controversial issue of public importance in the surrounding community; that notwithstanding this determination, the station was advised by counsel that the content of the ads might be considered a personal attack under Commission policy; and that this resulted in Mr. Lyons being notified that free time would be made available for a response.

You replied stating that the Union election was not a private dispute; that a personal "attack on the honesty, character and integrity of a major national labor organization in contest with another national labor organization for representation of a large group of employees" is a controversial issue of public importance; and that the station acted unreasonably in regard to the personal attack by failing to recognize the urgency of the matter and by denying Mr. Breen an opportunity to respond on the evening of the personal attack.

Before either the fairness doctrine or the personal attack rules are applicable to broadcast matters, it must first be determined whether a controversial issue of public importance is involved. Such determination initially is that of the licensee, who is called upon to make judgments as to what constitutes controversial issues of public importance and which ones to broadcast. The information before the Commission indicates that the licensee was confused somewhat in determining whether the alleged personal attack was made during the discussion of a controversial issue of public importance. This is evidenced by a November 1 letter offering Mr. Lyons time to respond "according to FCC regulations and WFAI station broadcast policy governing personal attack," and a November 28 response to the Commission which denies the existence of a controversial issue. However, the licensee states that the initial offer of time was a precautionary measure suggested by its attorneys who believed the ad was a "borderline case."

It appears that the election involved only 1230 employees in the

area served by WFAI, which had a 1970 population of some 212,000.[1] In addition you have submitted no information which would enable us to conclude that the issues surrounding the election were of such importance that the general public was concerned or affected by the outcome thereof. See *Dorothy Healy* vs *F.C.C.*, —— U.S. App. D.C. ——, 460 F.2d 917 (1972). Based upon the information before us, we cannot find that the station acted unreasonably in its decision that the union representation election was not a controversial issue of public importance in the station's listening area.[2]

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

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[1] According to the 1970 Census Fayetteville had a population of 161,775 and Cumberland County, in which Fayetteville is located, had a population of 212,042.

[2] Regarding the station's actions of October 31 in connection with Mr. Breen's request, the attached letter has been sent to the licensee.

F.C.C. 73-215

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
PROGRAM-LENGTH COMMERCIALS

FEBRUARY 22, 1973.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), ROBERT E. LEE, JOHNSON, REID, WILEY AND HOOKS WITH COMMISSIONER H. REX LEE CONCURRING IN THE RESULT, ISSUED THE FOLLOWING PUBLIC NOTICE:

PROGRAM-LENGTH COMMERCIALS

The Commission has issued several rulings concerning programs that interweave program content so closely with the commercial message that the entire program must be considered commercial.[1] (Although the decisions to date have dealt with "program-length" commercials, the policy expressed and the rulings described here can be equally applied to segments of programs.)

Program-length commercials raise three basic problems. Of primary concern is that such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability. In addition, a program-length commercial is almost always inconsistent with the licensee's representations to the Commission as to the maximum amount of commercial matter that will be broadcast in a given clock hour. Finally, there are usually logging violations involved. For example, the entries in the logs may show a total of six minutes of commercial matter during a half-hour program, when the entire 30 minutes should have been logged as a commercial.

Some examples of program-length commercials are set out below. However, the examples are by no means all-inclusive, and licensees should not conclude that the fact that a program employs a different format will necessarily cause it to comply with Commission policies and rules. The licensee is expected to exercise its judgment in this area of its broadcast material as it does in all other areas of programming.

Example 1.—A half-hour program is sponsored by a real estate developer. The program primarily shows views of the developer's latest venture, including its golf course, yacht club, marina, beach, and road and housing construction. The narration emphasizes the desirability of owning real estate generally and the

[1] These rulings include: *Topper Corporation*, 21 FCC 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *American Broadcasting Companies, Inc.*, 23 FCC 2d 134 (1970); *Columbus Broadcasting Company, Inc.* (*WRBL-TV*), 25 FCC 2d 56, 18 RR 2d 684 (1970); *Multimedia, Inc.* (*WBIR-TV*), 25 FCC 2d 59, 18 RR 2d 687 (1970); *KCOP-TV, Inc.*, 24 FCC 2d 149, 19 RR 2d 607 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67, 21 RR 2d 593 (1971); *WUAB, Inc.*, 37 FCC 2d 748, 26 RR 2d 137 (1972); and *WFIL, Inc.*, 38 FCC 2d 411, 25 RR 2d 1027 (1972).

desirability of buying real estate at the sponsor's development specifically. The narration also points out the desirability of the location in terms of nearby recreation areas, other facilities, access to highways and projected economic growth in the area. The narrator states that he has purchased land at the development and urges viewers to do the same. The entire program is commercial matter. See *Columbus Broadcasting Company, Inc.* (*WRBL–TV*), cited above in the footnote.

Example 2.—A record producer sponsors a 15-minute program in which listeners are asked to identify various compositions, all of which are contained on a record currently being distributed by the producer/sponsor. None of the compositions is played in its entirety and the excerpts vary from 35 seconds to 1 minute, 45 seconds. At the end of each excerpt the name of the composition and its composer is given. No other information is given or comments made. The record is advertised in three formal commercial announcements totaling 3½ minutes. The entire 15-minute program is commercial. See *KCOP–TV, Inc.*, cited in the footnote, above.

Example 3.—An association of dealers in lawn and garden supplies sponsors a program on gardening and lawn care. Throughout the program there are both formal commercials and informal plugs for various fertilizers, potting soils, pesticides and implements all of which are sold by association members. The dealers' association and the dealers themselves are also plugged. During demonstrations of gardening or lawn care techniques, various products sold by the dealers are used, promoted and prominently displayed. The program is entirely commercial.

In the past, the broadcast of such programs has resulted in issuance of letters of admonition and/or relatively small forfeitures based on the logging violation aspect of the cases. However, the Commission continues to receive evidence that some stations still are broadcasting programs which, because of the interweaving of "entertainment" or "informational" content with promotion of the advertisers' products, are program-length commercials.

This constitutes a reminder that the Commission considers the broadcast of such programs to involve a serious dereliction of duty on the part of the licensee, and a notice to all licensees that the Commission intends in the future to consider imposition of sanctions which it believes will be more effective in bringing about a discontinuance of the practice.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ROBERT H. HAUSLEIN, CORTLAND, N.Y.
Concerning Reasonable Access in Political Broadcast (Section 312(a)) Re Station WHEN-TV, Syracuse, N.Y.

FEBRUARY 21, 1973.

MR. ROBERT H. HAUSLEIN,
R.D. 4
Cortland, N.Y.

DEAR MR. HAUSLEIN: This is in response to your complaint of January 2, 1973, against Television Station WHEN-TV, Syracuse, New York. Your previous letter to the Commission of October 10, 1972 was answered by reply dated November 10, 1972.

In your letter of October 10, you stated that Station WHEN-TV had refused to sell the 7:30–8:00 p.m. time slot on that date to the McGovern for President Committee for the broadcast of a political campaign message by Senator McGovern, and that the station was not willing to make an alternative time slot available. You maintained that the station had thereby failed "in discharging its public service responsibilities" and requested the Commission to investigate the matter.

In the Commission's letter of response, you were informed that although under the Communications Act, as amended, the Commission is authorized to revoke any station license or construction permit for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy, no complaint had been received from Senator McGovern or his staff regarding WHEN-TV's refusal to sell time for the broadcast of the message in question.

In your letter of January 2, 1973, you again assert that in refusing to sell time for the broadcast of Senator McGovern's October 10 campaign message, Station WHEN-TV failed to comply with its obligation to allow candidates for Federal elective office "reasonable access" to its facilities on behalf of their candidacies, and contend that "it (is) immaterial that the Senator or his staff did not register a formal complaint." You have requested that the Commission advise you as to what action will be taken on your complaint.

Section 312(a) of the Communications Act of 1934, as amended, states in relevant part:

(a) The Commission may revoke any station license or construction permit—
(7) For willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcast station by

a legally qualified candidate for Federal elective office on behalf of his candidacy.

Your complaint seeks to invoke these provisions against WHEN-TV although neither Senator McGovern nor his campaign staff has filed a protest with the Commission regarding any refusal by the station to sell time for the broadcast of the Senator's talk.

The "reasonable access" provision of Section 312(a) (7) applies only to requests for the use of a station made by legally qualified candidates for Federal elective office. Absent a specific complaint from such candidate or his campaign staff concerning refusal of such request, we do not believe that Commission action is warranted. See Public Notice of March 16, 1972, "Use of Broadcast and Cablecast Facilities by Candidates for Public Office", 37 Fed. Reg. 5804–5805. Both the legislative history and underlying policy of the Federal Elections Campaign Act of 1971, which added the section in question to the Communications Act, support this position. The section on its face establishes obligations and rights of reasonable access only as between station licensees and candidates for Federal elective office. As Senator Pastore, one of the sponsors of the bill ultimately enacted as the 1971 Act, stated with respect to the purpose of the legislation:

> It attempts to give candidates for public office greater access to the media so that they may better explain their stand on the issues, and thereby more fully and completely inform the voters. 117 CONG. REC. S12872 (daily ed. Aug. 2, 1971).

This statement was incorporated verbatim in the Senate Commerce Committee's Report on the proposed Federal Elections Campaign Act. S. Rep. No. 96, 92d Cong., 1st Sess., p. 20 (1971). There was no indication by Congress of any intent to accord any right to other persons to demand the broadcast of a particular candidate's message or announcement. Rather, the right to reasonable access was made personal to the candidate. Nor is it simply a question of consideration by the Commission of a possible violation of law which may be raised as adequately by a member of the general public as by the candidate himself. As the Senate Committee on Commerce stated in its report:

> . . . complete freedom is being given to the broadcaster and candidates to develop specific program formats for the appearance of the candidates . . . Whatever is done, should be done as a result of discussion, negotiations, and cooperation between the candidates and the broadcasters. S. Rep. No. 96, 92d Cong., 1st Sess., p. 26 (1971).

Only the candidate (or his campaign manager or similar spokesman) and the station are in a position to know the background of any situation in which a particular request for time appears to have been rejected. In view of this consideration, we do not believe that the requirement for access can be properly administered on a basis other than on complaint by the candidate himself, who is the only one in a position to substantiate a claim that access has been improperly denied. For these reasons, it does not appear that further action on your complaint is warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission,

Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73R-99

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ST. CROSS BROADCASTING, INC., SANTA CRUZ, CALIF.	Docket No. 19503 File No. BP-18014
JAMES B. FENTON, GRANT R. WRATHALL, JR., LAWRENCE M. WRATHALL AND LORETTA WRATHALL, D.B.A. PROGRESSIVE BROADCASTING CO., APTOS-CAPITOLA, CALIF.	Docket No. 19506 File No. BP-18221
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 8, 1973)

BY THE REVIEW BOARD:

1. Before the Review Board is a motion, filed June 19, 1972, by Progressive Broadcasting Company (Progressive), requesting waiver of Section 1.229 of the Rules and the addition of a *Suburban* issue against St. Cross Broadcasting, Inc. (St. Cross).[1] The petition was not filed within the time limit specified by Section 1.229(b) of the Rules, and the Board does not find that Progressive has established good cause for the untimeliness.[2] However, the motion does raise serious public interest questions and the likelihood of proving the allegations contained therein is sufficient to meet the test set forth in *The Edgefield-Saluda Radio Co.* (*WJES*), 5 FCC 2d 148, 8 RR 2d 611 (1966). The Board will accordingly entertain Progressive's motion on its merits.

2. In its motion, Progressive alleges that the ascertainment efforts of St. Cross are defective, in that St. Cross principals did not conduct the surveys, the surveys were not of community leaders, certain community groups were excluded from the survey, the St. Cross demographic study was submitted after the surveys and the list of ascertainment needs submitted by St. Cross did not reflect its surveys. St. Cross opposes the motion and contests each allegation. The Broadcast Bureau acknowledges that there are deficiencies in St. Cross' *Suburban* showing, but opposes the motion on the ground that the deficiencies are not so great as to warrant specification of an issue.

[1] Also before the Board are: (a) opposition, filed July 5, 1972, by the Broadcast Bureau; (b) reply opposing motion [opposition], filed July 5, 1972, by St. Cross; (c) reply, filed July 13, 1972, by Progressive; (d) a letter, received July 14, 1972, from Progressive; (e) a letter, received July 14, 1972, from St. Cross; and (f) clarification of paragraph 6 of (c), filed July 14, 1972, by Progressive.

[2] In support of its claim for good cause, Progressive states that it discovered evidence supporting its motion while preparing an opposition to a St. Cross motion to enlarge issues against Progressive and that the burden of preparing that opposition prevented earlier completion and filing of its own motion.

3. The Board will add the requested issue. In general, the pleadings raise a substantial question as to the adequacy of St. Cross' ascertainment efforts pursuant to the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). First, it is not clear whether principals, management-level employees or prospective management-level employees have consulted with leaders of significant groups in the community in order to ascertain community problems, needs and interests.[3] With regard to the December, 1967, and February, 1969, surveys, it appears that they may have been directed solely to and resulted solely in ascertainment of programming interests and format preferences. See paragraph 17 of the *Report and Order* adopting the *Primer*, *supra*. *Cf. Estate of John C. Mullins*, 36 FCC 2d 78, 25 RR 2d 73 (1972). With respect to the September, 1969, survey, it is unclear whether it was conducted by a principal, management-level employee or prospective management-level employee. See Q. & A. 11(b) of the *Primer*, *supra*. *Cf. Childress Broadcasting Corp. of West Jefferson* (*WKSK*), 37 FCC 2d 766, 25 RR 2d 711 (1972). While the August, 1970, survey apparently was conducted by a principal, it has not been established that it was of community leaders rather than of the general public. See Q. & A. 4 of the *Primer*, *supra*. Mere membership in a profession, involvement in education, business or agriculture; or employment in government or social service do not automatically make an individual a "community leader". An applicant must make at least a minimal showing that either the interviewee is a leader of that group or organization of which he is a member, or that he, by virtue of his position or otherwise, should be considered a leader of some other portion of the community or of the community as a whole.[4] Thus, it must be resolved at the hearing whether St. Cross has shown that a dialogue has been established and will be maintained between the community and the decision-making personnel of the applicant. *WPIX, Inc.* (*WPIX*), 34 FCC 2d 419, 422, 24 RR 2d 59, 63 (1972), review denied FCC 72-616 (1972).[5]

4. Also, St. Cross does not appear to have contacted leaders of all significant groups in the community and this raises additional questions as to the adequacy of the survey. See paragraph 44 of the *Report and Order* and Q. & A. 16 of the *Primer*, *supra*. St. Cross reveals in its demographic study (see note 3, *supra*) that 5% of the population within its proposed 0.5 mv/m contour is Oriental; yet it appears to have made no effort at all to ascertain the needs of this group by consulting with its leaders.[6] Progressive raises this question, as well, with regard to the Mexican-American minority (8%-9%) within this area. Moreover, we find persuasive Progressive's contentions that St. Cross, in

[3] Results of its surveys were filed by St. Cross with the Commission on December 14, 1967; February 25, 1969; September 29, 1969; and August 3, 1970. On December 17, 1971, a description of the three counties contained within its proposed 0.5 mv/m contour, a "recapping" of ascertained needs, and programming proposals were filed by St. Cross.

[4] We also note that St. Cross has not interviewed a single member of the government of Santa Cruz City, its prospective community of license.

[5] The public policy underlying the requirement that consultation with community leaders must be done by means of a person-to-person dialogue between them and the decision-making personnel of the applicant has been articulated by the Commission in paragraph 33 of the *Report and Order*, *supra*. See also *Fisher's Blend Station, Inc.*, 30 FCC 2d 37, 21 RR 2d 1220 (1971), clarified 30 FCC 2d 705, 22 RR 2d 385 (1971), reconsideration denied 31 FCC 2d 148, 22 RR 2d 684 (1971).

[6] Absent an adequate description of the specific community of license (see paragraph 5, *infra*), we will assume that it reflects the population characteristics given for the counties.

some instances, contacted only individuals who work with or have knowledge of certain groups (*e.g.*, farm laborers) rather than leaders of those groups themselves. A question exists, too, whether St. Cross has consulted with the "rank and file" of certain groups, construing "representative", as used in the heading of paragraph 44 of the *Report and Order*, *supra*, to mean "sample" rather than "leader" or "spokesman". Paragraph 38 of the *Report and Order* explains that such an interpretation and procedure is improper. Also see *Qunnipiac Valley Service, Inc.*, FCC 73-174, —— FCC 2d ——, released February 23, 1973.

5. Finally, the demographic study submitted by St. Cross (see note 3, *supra*), too, appears to be insufficient. The major function of such a study, regardless of when it is filed, is to indicate to the Commission the composition of the community, so that the Commission can intelligently evaluate the sufficiency of the applicant's ascertainment efforts. See *WPIX, Inc.* (*WPIX*), *supra*. The necessity for such information is obvious in this proceeding. The very general description of the proposed 0.5 mv/m service area does not appear to comply with Q. & A. 9 of the *Primer* and, thus, prevents a satisfactory conclusion with regard to St. Cross' *Suburban* showing. *William R. Gaston*, 35 FCC 2d 624, 24 RR 2d 779 (1972). Moreover, the "recapping" of ascertained needs presented by St. Cross appears to be more closely attuned to the demographic study than to the interviews St. Cross has reported.[7] In sum, sufficient questions have been raised regarding St. Cross' showing to convince us that an issue is necessary to determine the efforts undertaken by St. Cross to ascertain the needs of its specified community and whether it proposes programming designed to help meet those ascertained needs.

6. Accordingly, IT IS ORDERED, That the motion for waiver of Section 1.229 and motion to enlarge issues, filed June 19, 1972, by Progressive Broadcasting Company, IS GRANTED; and that the issues in this proceeding ARE ENLARGED to include the following:

To determine the efforts made by St. Cross Broadcasting, Inc. to ascertain the community needs and interests of the area to be served and the means by which it proposes to meet those needs and interests; and

7. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence and proof under the issue added herein SHALL BE on St. Cross Broadcasting, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[7] While the needs of military personnel are noted in the "recap" and appropriate programming proposed, nowhere in any survey are contained interviews with members of that group or even mention of the military by other interviewees. We also have found no mention in the interviews of the exodus of young adults due to lack of employment opportunities, of the endangered species that exist in the area, or of the tourist influx during the summer months.

F.C.C. 73-214

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Logging
COMMERCIAL ANNOUNCEMENTS BY TAFT BROADCASTING CO., STATIONS WDAF-AM AND TV, CINCINNATI, OHIO

FEBRUARY 21, 1973.

TAFT BROADCASTING CO.,
Licensee of Stations WDAF and WDAF-TV,
1906 Highland Avenue,
Cincinnati, Ohio

GENTLEMEN: This is in reference to the "Jack of All Trades" program broadcast on Station WDAF and the "Let's Get Growing" program broadcast on Station WDAF-TV, Kansas City, Missouri.

The host of each program is John Paul "Jack" Tobin. Tobin is a full-time commission salesman for the Gordon Corporation, a manufacturer and wholesaler of agrichemicals, including fertilizers and pesticides designed for use by homeowners. The "Jack of All Trades" program is broadcast every week night from 9:05 to 10:00 and uses a call-in format in which listeners ask questions about home maintenance or lawn and garden problems. Tobin and his guests answer the questions. The program has no overall sponsor, but Station WDAF sells commercial announcements for use on the program. The Gordon Corporation is a regular advertiser, purchasing at least one 60-second advertisement per program. In addition, Tobin frequently recommends Gordon products in his answers to the questions posed by the callers.

"Let's Get Growing" is a half-hour television program broadcast on 26 Sunday afternoons during the growing season. It deals primarily with lawn and garden problems. Tobin recommends and uses various products and services on this program, including Gordon products, as will be described below.

Prior to May, 1972, neither Station WDAF nor Station WDAF-TV required Tobin to broadcast disclosure of his employment by the Gordon Corporation. Tobin, without being instructed by the station, has occasionally mentioned on the radio program that he was employed by the Gordon Corporation, but not on the television program. Since Tobin sold Gordon products to dealers in lawn and garden supplies in the area, and since he sold on a commission basis, he may be presumed to have benefited from his own plugs of Gordon products over the air.

The Commission has stated that:

> . . . a licensee has an obligation to exercise special diligence to prevent improper use of its radio facilities when it has employees in a position to influence program content who are also engaged in outside activities which may create a

conflict between their private interests and their roles as employees of the station . . .

Crowell-Collier Broadcasting Corporation (*KFWB*), 14 FCC 2d 358, 8 RR 2d 1080 (1966). In other circumstances where conflicts exist between private and public interests, the Commission has held that disclosure of the private interests should have been made, *Gross Telecasting, Inc.*, 14 FCC 2d 239, 13 RR 2d 1067 (1968). See too *National Broadcasting Company*, 14 FCC 2d 713, 14 RR 2d 113 (1968). The stations consider Tobin to be free-lance talent and not an employee. However, Tobin was a frequent performer on both Station WDAF and Station WDAF–TV and management personnel knew of his employment by the Gordon Corporation. While recognizing that the *Crowell-Collier* decision referred to employees, the Commission's conflict of interest policy, as expressed in that case, is applicable in the circumstances presented here. The Commission believes that Tobin's employment as a salesman on the Gordon Corporation should have been disclosed on the programs in question and that the failure to make such a disclosure falls short of the degree of responsibility expected of Commission licensees.

Video tapes of two "Let's Get Growing" programs have been reviewed. A description of the program of April 30, 1972, is as follows. The program begins with the introduction of Jack Tobin by the program's announcer and co-producer, Bill Yearout. Tobin then introduces his guest, Fred Pence, the owner and operator of The Garden Center, Lawrence, Kansas. Pence is a member of the Let's Get Growing Association. Pence appears on the program for the next 7 minutes, 41 seconds, during which he is shown planting flowers in gardens and in flower pots. During his demonstration, plugs are made for Hyphnum peat moss, Ames gardening trowel, Ferite-Lome bed mix for flower beds, and Pot Luck potting soil, totaling 3½ minutes. There follows a 60-second plug for Let's Get Growing dealers; a 2½-minute plug for Ferti-Lome rose food and Two Way Green Power, a 20-second plug for Gordon's Bugit, and 30-second plugs for Wicke's Garden Center, Waldo Grain Company, and Ferti-Life fertilizer. Pence then returns to demonstrate the planting of hanging baskets during which he plugs Sphagnum moss for 1 minute, 36 seconds, and Redi-Earth potting soil for 21 seconds. In the next 91 seconds, plugs are made for Soil Service Garden Center, Toro Motors, Hartman and Sons, Ames tools, Skinner Nursery, Fibrex, Miller Hardware, Flexogen hose, Rainbow Gardens, Two Way Green Power and Preen. The next 4 minutes, 59 seconds are devoted to a film showing a man spraying and feeding roses with Gordon's Fore-Plus fungicide and Ferti-Lome rose food. The products are never absent from the picture. This film is followed by a 60-second plug for Gordon's chickweed killer and a 60-second plug for Greenfield's Two Way Green Power. The program closes after an announcement that John Bell of Bell's Pest Control will be next week's guest.

In this 27-minute program, 21 minutes, 2 seconds promote the sponsor of the program, the Let's Get Growing Association, its members, or the products they sell. The demonstrations and informational content of the program are so intertwined with the promotion of the sponsor, its members, and their products that the entire program must

be considered a commercial announcement, *Columbus Broadcasting Company, Inc.* (*WRBL–TV*), 25 FCC 2d 56, 18 RR 2d 684 (1970), *Multimedia, Inc.*, 25 FCC 2d 59, 18 RR 2d 687 (1970), *KCOP–TV, Inc.*, 24 FCC 2d 149, 19 RR 2d 607 (1970), *WFIL, Inc.* (*WAND–TV*), 38 FCC 2d 411, 25 RR 2d 1027 (1972). Compare *National Broadcasting Company*, 29 FCC 2d 67, 21 RR 2d 593 (1971). It is not necessary to describe here the program of May 7, 1972, although the same conclusion must be reached as to that program.

You have elected, under Section 73.670(a)(2)(ii) of the Commission's Rules, to log the duration of each commercial announcement. Your logs show no commercial time during the "Let's Get Growing" program and the Commission has concurrently issued a Notice of Apparent Liability for failure to log commercial time. However, we are more concerned with two other aspects of these programs. First, they exhibit a subordination of programming of interest to the public to programming in the interests of salability. And second, since you have indicated to the Commission that you will ordinarily present no more than 16 minutes of commercial matter per hour, your actions are inconsistent with your representations to the Commission. Again, the Commission finds that you have fallen short of the degree of responsibility expected of a licensee.

You have stated that after May, 1972, corrective steps were taken to stop the practices cited above. This letter will be associated with the stations' files and will be considered again, along with all other pertinent information, in connection with your next applications for renewal of license of Stations WDAF and WDAF–TV.

Commissioner H. Rex Lee concurring in the result.

By Direction of the Commission,
Ben F. Waple, *Secretary*.

F.C.C. 73-265

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
BEN LLOYD TIPTON, III, 6213 CANYON DRIVE, OKLAHOMA CITY, OKLA.
Suspension of Radiotelephone Third Class Operator Permit Endorsed for Broadcast Operation

ORDER

(Adopted March 7, 1973; Released March 12, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has for consideration an Order suspending the Radiotelephone Third Class Operator Permit with Broadcast Endorsement, P3-10-17882, issued to Ben Lloyd Tipton III, and a timely filed request for hearing.

2. IT APPEARING, That on the basis of all of the information gained through an indepth investigation of all of the circumstances surrounding the events leading to the issuance of the suspension Order, and Mr. Tipton's replies thereto, no useful purpose would be served by proceeding with a formal hearing; that on the contrary, the public interest would best be served by an immediate termination of the instant proceeding.

3. Accordingly, IT IS ORDERED, That the suspension Order released August 20, 1970, in the above-captioned proceeding IS DISMISSED, and the instant proceeding IS TERMINATED.

4. IT IS FURTHER ORDERED, That a copy of this Order be sent to the licensee at his last known address of 6213 Canyon Drive, Oklahoma City, Oklahoma, 73105.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-274

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WALTON BROADCASTING CO. (WMRE), MONROE, GA. For Renewal of License	Docket No. 19011 File No. BR-2938

MEMORANDUM OPINION AND ORDER

(Adopted March 7, 1973; March 13, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT; COMMISSIONER HOOKS DISSENTING.

1. The Commission designated for hearing on a number of issues the application of Walton Broadcasting Company (Walton) for renewal of the license for standard broadcast station WMRE, Monroe, Georgia. FCC 70-1027, released October 2, 1970. The issues designated by the Commission inquire into whether Walton had filed false and misleading information with the Commission, whether Walton or its principals had participated in a strike application, and whether there had been an unauthorized transfer of control of station WMRE. Following the Commission's denial of Walton's petition for reconsideration of the designation order, 28 FCC 2d 111 (1971), the hearing commenced, and testimony was taken in Monroe, Georgia, on June 23-28, 1971. On October 18, 1971, the Administrative Law Judge granted Walton's request for an indefinite continuance of the hearing pending presentation to the Commission of a plan for the disposition of Walton. FCC 71M-1658. Meanwhile, on October 2, 1971, Henry P. Austin, Jr., on the petition of the National Bank of Monroe, was appointed by the Walton County Superior Court as the permanent receiver of the corporate assets of Walton and of the individual assets of Mr. Warren G. Gilpin, a major stockholder and President of Walton and general manager of WMRE. On October 26, 1971, the Commission granted the involuntary assignment of the license for WMRE from Walton to Austin.

2. Austin then filed with the Commission a petition for extraordinary relief in which he sought (1) termination of the hearing on the license renewal application for WMRE; (2) a grant without further hearing of the license renewal; and (3) approval of the assignment of the license for WMRE from Austin to three Monroe, Georgia, residents. Austin based these requests on several contentions. First, he stated that Mr. Gilpin had been found to be mentally ill and incapable of managing his own estate and asserted that severe illness has been recognized by the Commission as a basis for granting exceptions to our general policy of not permitting an assignment of a broadcast license while character issues remain outstanding against

the licensee or its principals.[1] Second, Austin alleged that both Walton and Mr. Gilpin are bankrupt and that only through a sale of WMRE can their innocent creditors recover the sums owed them. Finally, Austin contended that no profit would accrue to Mr. Gilpin if the assignment were approved since any surplus funds from the sale would be paid into an irrevocable trust with the income therefrom going to defray the cost of Mr. Gilpin's hospitalization. The Commission denied Austin's petition, holding that the allegations concerning Mr. Gilpin's health were insufficient to warrant the requested relief, and that in any event, the proposed assignment would result in a significant benefit to an alleged wrongdoer, and so could not be approved. FCC 72–1036, released November 27, 1972.

3. Now before the Commission is a petition filed by Austin seeking reconsideration of our denial of his petition for extraordinary relief.[2] In the petition for reconsideration, Austin requests essentially the same relief as that sought in his petition for extraordinary relief. As support, Austin reiterates his argument that a station assignment may be permitted under the Commission's equitable powers if the licensee's principal is seriously disabled, even if there are unresolved questions concerning the principal's character qualifications. Austin, however, has presented nothing of substance which was not before us when we held that the allegations regarding Mr. Gilpin's health were not sufficient to warrant a termination of the hearing and a grant of the proposed assignment. We therefore shall adhere to this determination particularly since Austin has not shown that completion of the remaining hearing process would in any manner endanger Mr. Gilpin's health. See *Tinker, Inc., supra.*

4. Moreover, and more importantly, it appears that approval of the proposed assignment would result in a significant benefit to Mr. Gilpin. As we stated in our opinion denying Austin's petition for reconsideration, it is the Commission's firmly established policy that an assignment of a broadcast license will not be considered if issues concerning the character qualifications of the licensee or its principals are outstanding and if the proposed assignment would result in a significant benefit to an alleged wrongdoer.[3] Walton's balance sheet attached to Austin's petition shows Walton's total liabilities to be $42,334.66. Thus, after payment of Walton's debts, a substantial portion of the $112,718.52 purchase price would remain for distribution to Mr. Gilpin. This clearly constitutes a significant benefit. While Austin states that the sale proceeds will be used to discharge Gilpin's

[1] Citing *Martin R. Karig*, FCC 64–850, 3 RR 2d 669 (1964), and *Tinker, Inc.*, 8 FCC 2d 22 (1967).

[2] Other pleadings before the Commission are: Oppositions to the petition for reconsideration, filed by the Chief of the Broadcast Bureau and by Community Broadcasting Company on January 9 and 10, 1973, respectively, and a reply to the oppositions filed by Austin on January 22, 1973.

[3] See *Jefferson Radio Co., Inc.* v. *FCC.*, 340 F. 2d 781 (1964); *Tidewater Teleradio*, 24 RR 653 (1962) and *Milton Broadcasting Co.*, 12 FCC 2d 354 (1968). Compare with *Second Thursday Corporation*, 25 FCC 2d 112 (1970), and *Shell Broadcasting, Inc.*, FCC 73–3, released January 8, 1973, where we allowed assignments where it was clear that each proposed assignment would result in either no benefit to alleged malfeasors or merely an insignificant one which was outweighed by the equities in favor of innocent creditors.

debts,[4] we have held that such a use constitutes a significant benefit to an alleged wrongdoer and is therefore impermissible.[5]

5. Austin points out, however, that the contract for the sale of WMRE provides that the Commission may set a lower sales price than that called for by the contract if the Commission should determine that Mr. Gilpin would receive a significant profit from the proposed assignment. Austin suggests that the Commission failed to consider fully this provision when it denied Austin's petition for extraordinary relief. Austin also requests, should the Commission decide that the proposed assignment allows Gilpin an impermissibly large profit, that "a brief negotiating session be effected among all parties, to determine an approvable consideration." We did not fail to consider the provision allowing the Commission to set a lower sales price than that stipulated by the parties. On the contrary, we were fully aware of this provision of the contract, and we rejected its implementation for the same reason that we must deny Austin's request for a negotiating session to set a lower purchase price. We do not believe that it is the proper role of the Commission to participate as a broker or referee in negotiations between private parties except as required by our statutory duty to protect the public interest. We think this is particularly so in this case where our role would essentially be that of an inverse auctioneer, which role we, of course, must reject. Our duty, as we see it, is to determine whether the proposal which Austin has set forth complies with our rules and policy. Since it seems clear that it does not, we cannot approve it, absent resolution of the presently outstanding character issues.

6. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by Henry P. Austin, Jr. on December 27, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[4] Mr. Gilpin's debts, according to the balance sheet submitted by Austin, amount to $95,084.29. Austin, in his petition for reconsideration, states that Walton's and Mr. Gilpin's combined liabilities total $102,718.52. However, it is unclear how this latter figure was derived.

[5] See *Capital City Communications, Inc.*, 33 FCC 2d 703, reconsideration denied, 34 FCC 2d 685 (1972).

F.C.C. 73R-100

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WESTERN COMMUNICATIONS, INC. (KORK-TV), LAS VEGAS, NEV. For Renewal of License	Docket No. 19519 File No. BRCT-327
LAS VEGAS VALLEY BROADCASTING CO., LAS VEGAS, NEV. For Construction Permit for New Television Broadcast Station	Docket No. 19581 File No. BPCT-4465

MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 9, 1973)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER DISSENTING WITH RESPECT TO THE NETWORK AVAILABILITY ISSUE.

1. Western Communications, Inc.'s (Western) application for renewal of license for Television Station KORK-TV, Las Vegas, Nevada was designated for hearing by Commission Order FCC 72-503, released June 12, 1972, 37 FR 121, to determine whether it had engaged in certain fraudulent billing practices. There was also pending at that time a mutually exclusive application for a new television station, filed by Las Vegas Valley Broadcasting Company (Valley). The Commission, by Order FCC 72-767, released September 1, 1972, 37 FR 184, redesignated Western's application and Valley's application for consolidated hearing on the issues previously designated as to Western and on a standard comparative issue. Western has now filed a motion to enlarge the issues as follows: [1]

1. To determine whether a loan commitment from the Nevada State Bank has been withdrawn and, if so, whether Las Vegas Valley Broadcasting Co. (a) is financially qualified, (b) has misrepresented facts to the Commission concerning the existence of the loan commitment, and (c) failed to comply with Section 1.65 of the Commission's Rules by not reporting the withdrawal of the loan commitment;

2. To determine whether Las Vegas Valley Broadcasting Co. will be able to obtain, or has reasonable expectations of being able to obtain, an NBC network affiliation as proposed in its application, and, if not, whether Las Vegas Valley Broadcasting Co. (a) has misrepresented facts to the Commission concerning the existence of an affiliation agreement with the NBC Television Network, (b) can effectuate its program proposals, and (c) is financially qualified;

3. To determine the facts and circumstances surrounding the criminal convictions of Sam Cohen, a Director and subscriber to at least 10% of the stock of Las Vegas Valley Broadcasting Co., for violation of the Internal Revenue Code by filing a false wagering excise tax return (26 U.S.C. § 7207) and for bookmaking,

[1] The motion was filed on October 6, 1972. Las Vegas Valley Broadcasting Co. filed its opposition November 27. The Broadcast Bureau filed comments on November 24, 1972 and Western filed its reply December 22, 1972. On February 28, 1973, Las Vegas filed a motion for leave to file a response, which will be denied, *infra*, and a response to reply which will be dismissed.

in violation of the California gambling laws, whether Las Vegas Valley Broadcasting Co., should have informed the Commission of such facts and circumstances, and whether Las Vegas Valley Broadcasting Co. is legally qualified to be a licensee;

4. To determine with respect to Las Vegas Valley Broadcasting Co.:

a. whether, if the loan commitment it relies on from the Nevada State Bank has not been withdrawn, Las Vegas Valley Broadcasting Co. is able to meet the terms and conditions of the proposed loan;

b. whether stock subscribers Harry E. Fightlin, Aaron S. Gold, Addeliar D. Guy, Eugene L. Kirshbaum, James B. and Marie E. McMillan, James E. Rogers, Elizabeth W. Scott, and Clark Henry Tester are financially qualified to meet their respective stock subscription commitments;

c. to what extent Las Vegas Valley Broadcasting Co. proposes to rely on credit from RCA;

d. whether the estimated revenues are reasonable in light of the absence of an NBC affiliation agreement and any reasonable expectation of such an affiliation;

e. whether the estimated costs of construction and operation are reasonable, in view of the omission of substantial items of expense and the absence of an NBC affiliation and any reasonable expectation of such an affiliation;

f. whether, in view of the evidence adduced pursuant to this issue and pursuant to issues 1, 2, 5 and 6, Las Vegas Valley Broadcasting Co. is financially qualified to construct, own and operate the proposed television broadcast station;

5. To determine whether Las Vegas Valley Broadcasting Co., has proposed adequate studio and office facilities, and, if not, whether it can effectuate its proposal;

6. To determine with respect to the transmitter site proposed by Las Vegas Valley Broadcasting Co.:

a. whether the necessary rights of access to the site can be obtained and, if so, on what terms and conditions;

b. whether the site is suitable for use as proposed;

7. To determine whether the plans, if any, which Las Vegas Valley Broadcasting Co. has made to comply with the Commission's equal employment opportunity requirements are in fact adequate to comply with those requirements;

or, if the foregoing issue is not designated,

To determine on a comparative basis the significant differences between the applicants with respect to the plans made by each applicant to comply with the Commission's equal employment opportunity requirements;

8. To determine whether Las Vegas Broadcasting Co. has failed to maintain its local public file in compliance with Section 1.526 of the Commission's Rules;

9. To determine whether Las Vegas Valley Broadcasting Co. has violated Section 1.513(b) of the Commission's Rules in connection with an amendment to its application that was filed October 26, 1971;

10. To determine whether Las Vegas Valley Broadcasting Co. has demonstrated such ineptness and/or failures to comply with Sections 1.514 and 1.65 of the Commission's Rules as to warrant disqualification of Las Vegas Valley Broadcasting Co. to be a licensee of the Commission;

11. To determine whether in light of the evidence adduced under the preceding issues, Las Vegas Valley Broadcasting Co. is qualified to be a licensee of the Commission;

12. To determine in the event that it is concluded that Las Vegas Valley Broadcasting Co. is not disqualified to be a licensee of the Commission, what impact, if any, the evidence adduced under the preceding issues would have upon its comparative evaluation.

ISSUES WITH RESPECT TO VALLEY'S LOAN COMMITMENT

2. Valley proposes to rely to a substantial extent on a one million dollar loan from the Nevada State Bank. Western contends that this commitment has been withdrawn and that Valley has been so advised by the Bank. In support of this contention, Western submits

an affidavit from Mr. Fred W. Smith, Executive Vice President of Don Rey, Inc.[2] In that affidavit Mr. Smith states that on September 5, 1972, Mr. Harley Harmon, President of the Nevada State Bank of Las Vegas stated to him that the Nevada State Bank had withdrawn its one million dollar loan commitment to Las Vegas Valley Broadcasting Company and that a letter advising Las Vegas Valley Broadcasting Company of the withdrawal had been sent by the Bank. In a later telephone conversation, Smith continues, Harmon told Smith that he could not find the letter but that Las Vegas Valley Broadcasting Company had been advised of the withdrawal verbally. Smith further states that he had requested Harmon to sign an affidavit concerning Nevada State Bank's withdrawal of its loan commitment to Las Vegas Valley Broadcasting but Harmon declined to sign such an affidavit until he had checked with his counsel; Mr. Harmon then left the city for an extended visit but instructed Smith to check with his counsel on the matter. Smith further asserts that he had made repeated requests of Mr. Harmon's counsel but he has not been provided with such an affidavit nor has Mr. Harmon or his counsel declined to provide one. Finally, Smith notes that a copy of his affidavit is being served on Harmon. Western contends that in view of this state of affairs, issues to determine whether or not the loan relied upon by Valley will be available to it and also issues to determine whether Valley has failed to report a substantial change of decisional significance as required by Section 1.65 of the Commission's Rules or whether it has deliberately misrepresented facts to the Commission must be added to this proceeding.

3. This showing by Western does not warrant the addition of the issues requested. Section 1.229 of the Commission's Rules requires that allegations be supported by affidavits of persons with personal knowledge of the facts. Mr. Smith's affidavit is clearly hearsay. Moreover, Valley's opposition is supported by an affidavit of Mr. James E. Rogers, its president, who states that he is fully familiar with all aspects of the loan commitment from Nevada State Bank, that he personally arranged for the loan commitment, and that he has not been advised that the commitment has been withdrawn and has not had any contact with any officer of the bank concerning this matter. We cannot accept the Bureau's suggestion that even though the Smith affidavit does not comply with the requirements of the Commission's Rules, Western has raised sufficient questions to warrant the inclusion of an issue to determine whether the loan will be available to Valley. Nor are we persuaded by Western's suggestion that Valley's failure to submit a current letter of commitment from the bank justifies a presumption that the bank has withdrawn its commitment.

THE NETWORK AFFILIATION ISSUE

4. Western points out that Valley has reported to the Commission that it will operate as an NBC affiliate. Yet petitioner asserts, Valley has not discussed the possibility of affiliation with NBC or any of its

[2] Don Rey, Inc. is the parent company of Western Communications, Inc.

officers or directors.[3] Moreover, Western contends that NBC would not even consider a request for a network affiliation before the applicant has a construction permit from the Commission. Western argues that, since there are four operating VHF broadcasting stations in Las Vegas, Valley has no real assurance that it will have any network affiliation whatsoever. Petitioner contends that, since Valley's entire programming proposal and a very substantial part of its financing proposal is dependent upon the acquisition of an NBC affiliation, an issue should be specified to determine (a) whether Las Vegas has misrepresented facts to the Commission concerning the existence of an affiliation agreement with NBC Television, or (b) whether it can effectuate its program proposal without a network affiliation and (c) whether it is financially qualified. Both Valley and the Broadcast Bureau oppose the addition of such an issue. They contend that Valley does not purport to have a network affiliation agreement but that the representation in its application is merely a proposal. Furthermore, they contend that in the circumstances of this case, i.e. where Valley seeks the facilities of an existing station which is now an NBC affiliate, Valley can reasonably expect to obtain such an affiliation.

5. It is clear from the documents filed by Valley that it does not now have a firm network affiliation agreement. Moreover, in the circumstances of this case, there is no real assurance that Valley will in fact be able to obtain a network agreement. Since there are four VHF stations in operation in Las Vegas, it is entirely possible that NBC could choose to affiliate with one of the other operating stations. Moreover, it is equally possible that the other networks might well choose to affiliate with the other operating stations, thus leaving Valley to operate as an independent station. Such a change in circumstances may well have a very substantial effect on Valley's ability to meet its financial obligation and its ability to effectuate its proposed programming. In these circumstances, the Board will add an issue to determine whether Valley can reasonably expect to obtain a network affiliation and to ascertain, should such a station not be affiliated with a network, the effect on Valley's financial qualifications and its ability to effectuate its proposed programming. We do not believe, however, that a misrepresentation issue regarding this matter is warranted since Valley did not represent that it already had an affiliation agreement, and the good faith of its proposal to obtain such an agreement has not been challenged.

ISSUE CONCERNING THE CONVICTIONS OF SAM COHEN

6. Western alleges that in 1940, Sam Cohen, a principal of Valley, entered a plea of guilty to a charge of bookmaking, a violation of the California gambling laws, and was sentenced to 50 days in prison or a $1,000.00 fine, and that Cohen in fact paid the fine. Moreover, Western alleges that on September 25, 1964, Cohen entered a plea of *nolo contendre* to an alleged violation of the Internal Revenue Code for filing a false gambling Federal Excise Tax return, and that Cohen

[3] This assertion is supported by an affidavit of Donald J. Mercer, vice president for station relations of NBC.

in fact paid a $1,000.00 fine for this offense. Neither of these criminal convictions were disclosed in Valley's application, petitioner points out. Western contends that Cohen should have reported this information pursuant to the requirements of FCC Form 301, Section II, paragraph 10(d), which asks:

Has the applicant or any party to this application been found guilty by any court of (1) any felony, (2) any crime, not a felony, involving moral turpitude, (3) the violation of any State, territorial or local law relating to unlawful lotteries, restraints and monopolies and combinations, contracts or agreements in restraint of trade, or (4) using unfair methods of competition?

Western contends that the California bookmaking offense falls within the scope of the Commission's request for information concerning violations of the state, territorial or local law relating to unlawful lotteries and that, while the Federal conviction for filing a false gambling tax return does not constitute a felony, it must fall within the definition of a crime involving moral turpitude; thus it should have been reported.

7. In opposition, Valley contends that the information with respect to Cohen was not reported because neither crime was a felony, neither involved moral turpitude, and neither was a violation of unlawful lottery laws. Valley points out that at the time of Cohen's conviction for bookmaking, the State of California had a separate and distinct section of its code dealing with lotteries and that bookmaking does not fall within the definition of a lottery in the State of California. With respect to the filing of a false excise tax return, Valley contends that it was not a crime involving moral turpitude, that the Internal Revenue Service brought the action as a misdemeanor because the false return was the result of a clerical error rather than any deliberate attempt on the part of Cohen to evade the payment of tax, and that the *nolo contendre* plea indicates that all the parties involved agree that the allegations involved were not such that a full trial was necessary. For these reasons, Cohen did not report the violations concerned. The Bureau in its comments suggests that since Western has supported its allegations with appropriate documentation the issue should be added.

8. The requested issue will not be added by the Board. Valley has demonstrated that the 1940 California conviction is not a violation of the state's lottery laws. Moreover, the Board is satisfied by Valley's explanation of the circumstances surrounding Cohen's *nolo contendre* plea in the false gambling excise tax return case that Valley's failure to regard this conviction as a crime involving moral turpitude was not unreasonable and that an evidentiary inquiry into this matter would not be decisive as to Valley's qualifications.

THE GENERAL FINANCIAL QUALIFICATIONS ISSUE

a. The ability of Valley to comply with terms of the Bank letter

9. Western contends that, as a condition precedent to the issuance of its loan, the principals of Valley must have paid in $200,000.00 of unencumbered capital. Further, Western notes that the Valley application does not show what collateral would be available to meet this requirement. Petitioner points out that, as of the date of its petition,

$92,000.00 of the $200,000.00 proposed to be paid by the principals had already been paid in; that of this amount $45,000.00 has already been expended in organizational costs; and that Valley estimates that its legal costs will amount to $175,000,000. Thus, Western contends, the paid in capital cannot be used to meet the $200,000.00 collateral requirement. Moreover, Western contends that the equipment which Valley proposes to purchase for its station cannot serve as collateral because it is to be purchased on credit and will be encumbered to assure the payment of the balance due on the purchase price. In these circumstances, Western argues that even if the loan commitment has not been withdrawn, as it contends, Valley will not be able to produce the necessary $200,000.00 in unencumbered capital. Western also contends that, even if Valley is able to meet the collateral requirements, the loan may not be available because the commitment letter refers to a corresponding bank that would participate in the loan without identifying that bank or advancing any commitment from it to participate in the proposed loan.

10. In opposition, Valley argues that the Commission found it financially qualified and that Western has advanced no evidence that it is not so qualified or that the bank loan will not be available to it. Particularly, Valley argues that Western's concept of unencumbered collateral is not warranted by the terms of the commitment letter which does not specify the nature of the collateral which will be required at the time the loan is taken down. Nor is the absence of a specific commitment on the part of a particular corresponding bank necessary for the validity of the loan commitment, Valley urges. The Bureau notes that the bank loan is an essential part of Valley's proposed financing plan and agrees that Valley may not have the necessary $200,000.00 in unencumbered capital as collateral for the loan.

11. An issue inquiring into the availability of the bank loan will be added. It is not clear precisely what the bank will require by way of collateral nor is it apparent what unencumbered collateral Valley will have available. Since the loan is essential to Valley's financial qualifications, an issue to clarify the matter is appropriate.

b. Ability of Western's stock subscribers to meet their commitments

12. Western also contends that the financial information submitted with respect to eight of Valley's stock subscribers indicates that they are not financially qualified to meet their stock subscriptions. Insofar as Western's allegations are directed to the qualifications of Aaron S. Gold, the matter has become moot since Valley amended its application prior to designation for hearing to delete Mr. Gold as a stock subscriber and the Commission denied Western's motion to strike prejudicial portions of an amendment by Memorandum Opinion and Order, FCC 72-1155, released December 26, 1972, —— FCC 2d ——, —— RR 2d ——. Western contends that the balance sheets of Harry E. Fightlin, Addelair D. Guy, Elizabeth W. Scott, Eugene L. Kirshbaum and James E. Rogers indicate that they do not have sufficient liquid assets in excess of current liabilities to meet their stock subscriptions. Petitioner argues that stocks and bonds listed by these stock subscribers may not be regarded as liquid assets since they have not identified

those securities, the markets upon which they are traded or their current market value. Moreover, Western argues, those stock subscribers who purport to rely upon bank loans to meet their subscription obligation have not submitted sufficient information concerning the terms of the proposed loans to enable a finding that they are qualified to meet their subscriptions.

13. Each of the above-named stock subscribers now purports to rely upon a commitment for a personal loan to meet their respective subscription obligations; and have submitted personal balance sheets which afford the Board an opportunity to determine that the bank commitments are not unreasonable. See *Calajay Enterprises, Inc.*, 32 FCC 2d 690. Stock subscribers, as distinguished from applicants, are not required to show the terms of repayment or other details of the loan agreement. Thus, as to stock subscribers Fightlin, Guy, Scott, Kirshbaum and Rogers, the Board finds no need to inquire further concerning their ability to meet their stock subscriptions.

14. As to stock subscribers James B. and Marie E. McMillan, Western contends that just two weeks after the date of their joint balance sheet showing net assets of almost one half a million dollars, James B. McMillan was discharged in bankruptcy. The inherent inconsistency in the financial position represented by the bankruptcy proceeding as opposed to the current McMillan balance sheet warrants an issue, petitioner urges, to determine whether the McMillans have misrepresented their financial position to the Commission or whether the McMillans are able to meet their stock subscriptions. In opposition, Valley submits an affidavit from James B. McMillan which explains that in 1969, he filed a petition in bankruptcy and that he was subsequently discharged in bankruptcy. McMillan states further that the assets shown on the joint balance sheet of James B. and Marie E. McMillan were largely the personal assets of Marie McMillan before she married James and any additional assets were jointly acquired by James B. and Marie E. McMillan after the petition in bankruptcy had been filed. In these circumstances the Board is satisfied that the McMillans can meet their stock subscriptions. We are not persuaded by Western's argument that, because the assets shown on the joint balance sheets were principally the personal assets of Marie McMillan, James will not be able to meet his subscription obligation, since the assets shown on the balance were not subject to the bankruptcy. Thus, inquiry into the ability of the McMillans to meet their stock subscription is therefore not warranted. Moreover, the uncontradicted explanation proferred by McMillan clearly establishes that the balance sheet did not misrepresent the facts and accordingly no basis for a misrepresentation issue in this regard is present.

15. Western urges that, based on his balance sheet, Clark Henry Tester will not be able to meet his stock subscription. Tester will be program director of Valley's proposed station. He plans to rely upon loans from other stock subscribers to meet his $5,000 obligation. In his affidavit attached to Valley's opposition, Tester states that the repayment for this loan will be made out of current income. In light of these circumstances, an issue concerning Tester's ability to meet his stock subscription is not warranted. It is not unreasonable to assume that the entrepreneurs who are applying for a new television station

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are willing to lend their proposed program director the relatively small sum required to be paid by him for his stock. Nor is it improbable that Tester can meet his obligation to make repayment out of his current income. In light of the foregoing, the Board will add no issues concerning the ability of Valley stock subscribers to meet their obligations to the corporation.

c. Estimated revenue issue

16. Western notes that Valley's financial proposal encompasses only the costs of constructing its proposed station and operating it for three months. Western argues that since Valley cannot be assured of an NBC network affiliation, it cannot rely on proposed revenues to cover the remaining costs of operation during the first year. The Board agrees that, in the absence of an adequate showing that Valley can rely on an NBC network affiliation, its estimated income is too uncertain to be relied on. We do not agree with Valley's contention that the Commission precedent which requires an applicant preparing to replace existing facilities to show sufficient funds to construct and operate its station for three months, is applicable here. It is clear that in making determinations as to whether an applicant has sufficient funds to construct and operate its station, the Commission will take into consideration any factors which are peculiar to the given case, see *Ultravision Broadcasting Company*, 1 FCC 2d 544, 5 RR 2d 343 (1965). In this case Western has pointed out that there is a serious question as to whether Valley will be able to obtain a network affiliation, and, absent such an affiliation, there is no basis for according its estimate of revenues more weight than that ordinarily given to applicants for new facilities. In these circumstances, an appropriate issue will be added to this proceeding.

d. RCA credit issue

17. Western also argues that an examination of Valley's equipment proposal indicates that it will not require $1,470,000.00 worth of equipment from RCA and thus it cannot rely on $1,042,287.00 of deferred credit from RCA. The Board cannot accept this contention. There is no reason to assume that, should Valley require less equipment than that proposed, the deferred credit arrangement will not be available to it. Western's contention that some of the equipment proposed may be purchased elsewhere and thus not included in the RCA credit arrangement is not persuasive. Thus, in our view, Western has raised no question which warrants further inquiry into the proposed credit arrangement.

e. Cost estimate issues

18. Western has also contended that Valley has failed to take into account the cost of constructing and operating a microwave system to deliver its network programming to Las Vegas, Nevada. Western further contends that it maintains an intercity microwave system to deliver its programming to Las Vegas; that the cost of the equipment for this system in 1964 was approximately $83,700.00; that the same equipment today would cost $95,000.00; and that the cost of towers, building and access roads would be an additional $95,000.00. Thus, petitioner asserts, to construct an appropriate intercity microwave

relay system, Valley will be required to invest at least $190,000.00 and to expend at least $48,690.00 per year in operational expenses. In opposition, Valley contends that it has included the cost of microwave service in its first year's operating expense and that it based its projected first year operating costs on the costs for microwave relay service of existing stations in the Las Vegas market as reported in the Commission's annual financial reports for the market. Valley relies upon a statement in the affidavit of Mr. Rogers, its president, to the effect that Valley intended to pay any costs for intercity microwave relay from its anticipated operating expenses. Valley's conclusory statement, with no explanations of the specific costs involved or how those services will be provided is not a satisfactory answer to the allegations advanced by Western. In the Board's view, questions concerning the probable costs to Valley of obtaining the necessary microwave relay service are sufficient to warrant inquiry into this aspect of Valley's proposal.

f. Studio Costs

19. Western alleges that Valley's proposal to lease studio space at a cost of approximately $10,000 per annum will not provide sufficient suitable space in Las Vegas to operate a VHF television station. It is Western's contention that in order to successfully operate a television station certain special equipment is required, such as: abnormally high ceilings, special wiring which would cost a minimum of $25,000.00, special heavy duty air conditioning at a cost of $15,000.00 over the normal building air conditioning equipment and soundproofing which would cost approximately $2,500.00 over normal soundproofing. Furthermore, Western argues that, for such a studio to operate successfully, it must have a minimum of 10,000 square feet of space. In support of this, it points to the space utilized by Stations KORK–TV, KLAS–TV and KSHO–TV, all operating TV stations in Las Vegas, Nevada.[4] Western then alleges that on the current Las Vegas market, $10,000.00 per year can pay for no more than 6,000 square feet of refrigerated warehouse space, that this space would not be sufficient to meet Valley's requirement, nor is the space which could be acquired for this amount suitable for television studio purposes without the inclusion of special wiring, additional air conditioning and special soundproofing. In opposition, Valley submits a letter from its stock subscriber, George C. Brookman, who is also a general contractor in Las Vegas, offering to make available to Valley a building owned by him. According to Brookman the building contains approximately 7,000 square feet of open studio space which will be partitioned in any manner required by Valley at the expense of the owner, in addition, the building contains 4,000 feet of office space. Brookman states that he is offering a ten year lease with an option to renew for an additional ten years, and that the rental for the entire facility, including any partitioning and a transmitter house to be constructed by the owner, would be $10,000 for the first year and the balance of the term at a rental which will allow the owner a fair rate on all of the real property and improvements over the term of the lease. In its reply, Western

[4] Western attaches affidavits of operating officials of each Las Vegas network station setting forth the space required by that station.

submits photographs of the building which Brookman proposes to make available to Valley and contends that it is not properly equipped with refrigerated air conditioning and that the ceilings are probably no more than twelve feet high; thus, Western contends, the building will not be suitable for studio use. The Board, however, is satisfied that Valley can effectuate its proposal, utilizing the space offered by its stockholder Brookman on the terms described in his letter. While the arrangements may be somewhat less than optimum, we are not persuaded that Valley will be unable to operate using those proposed facilities.

g. Transmitter site costs

20. Western contends that Valley has failed to take into account certain cost items necessary to construct its proposed transmitter. Particularly, petitioner alleges that Valley's amended application requires 275 feet of transmission line as opposed to the 150 feet set forth in the original application. Western urges that the additional 125 feet will cost approximately $2,400.00. Moreover, Western notes that Valley has made no provision for a transmitter house at its antenna site and contends that there is not presently any suitable space which Valley could rent at the transmitter site. It is Western's opinion that such a building would cost a minimum of $25,000.00. Western also points out that the only access to Valley's proposed antenna site is via privately owned roads and alleges that the cost of the use of those roads would surely exceed $3.000.00. Thus, Western contends, an issue inquiring into these costs should be included in this proceeding. In opposition, Valley alleges that it will not be necessary for it to construct a transmitter building at its antenna site or to lease space at that site since Mr. Brookman has agreed to construct such a building on the property occupied by its proposed studio and to make it available as part of the package for studio and office space discussed in paragraph 19, *supra*. Moreover, Valley attaches as Exhibit 11 of its opposition a letter from the Bell Telephone Company of Nevada advising Valley that it is not the company's policy to deny others the use of its private access roads so long as certain conditions are met. Further Valley points to Mr. Roger's affidavit to the effect that he stands ready to negotiate with the Alta Corporation [5] for the use of its portion of the access road; in these circumstances, Valley contends, no issue with respect to its cost estimate in this regard is necessary. In our view, Western has raised some questions concerning costs which might be incurred by Valley obtaining access to its proposed antenna site which should be taken into account in this proceeding. Valley has not disclosed what conditions might be imposed as conditions precedent to its use of the telephone company's access road or what the cost might be. Nor does it know what terms might be required to use the Alta Corporation road from the telephone company site to the mountain top. Accordingly, an appropriate issue will be included.

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[5] Alta Corporation, owned jointly by Western and KLAS-TV, is the proprietor of a road which runs from the Bell site to the top of Black Mountain, where Valley proposes to erect its antenna.

h. Programming costs

21. Western also questions the validity of Valley's cost estimates in connection with its first year of operation. Essentially, Western bases its argument on its contention that Valley will not have an NBC network affiliation. In view of our prior determination that an issue concerning Valley's network affiliation must be included in this proceeding (see paragraph 5, *supra*), an inquiry into Valley's program costs should such an affiliation not be available is appropriate.

STUDIO AND OFFICE SPACE ISSUE

22. Western contends that the studio and office space proposed by Valley is not adequate for the operation of its television facilities and seeks an issue inquiring into this matter. Particularly, it contends that, based on the current real estate market in Las Vegas, Valley can not possibly procure the facilities that will be necessary to successfully operate its station. In view of our ruling with respect to the cost of Valley's proposed studio and office building (see paragraph 19, *supra*), this issue will not be added to the instant proceeding.

TRANSMITTER ACCESS AND SUITABILITY ISSUE

23. In support of this request, Western contends that Valley must obtain permission from the Department of Interior, Bureau of Land Management to use its proposed Black Mountain site and that in considering such requests the Bureau of Land Management applies the following standard:

> **applicants for communications sites on this mountain will be considered on equal grounds and right of way for use will be allowed if the applicant meets the necessary criteria as established in the Federal regulations.**

Western points out that Valley has not given evidence on having requested a permit for the use of Black Mountain and contends that before the Bureau of Land Management will grant such a permit, Valley must show that it has made arrangements to use the access road owned by Bell Telephone Company of Nevada and an access road from the Bell site to the top of the mountain which is owned by Alta Corporation. Furthermore, Western points out that Alta constructed its road at a total cost of approximately $90,000, and urges that, if Valley is to use this road, it will be required to reimburse Western for its share of the cost of construction and to pay its pro rata share of the maintenance of said road. Moreover, Western contends, the mountain top site proposed by Valley is not suitable to support a guyed tower since there is not sufficient level area to provide appropriate sites for the guy anchors. In support of this contention, Western submits an affidavit from its consulting engineer to the effect that the only suitable installation that could be used on Valley's Black Mountain site would be a self-supporting tower. In opposition to these contentions, Valley argues that it already has a letter from Bell Telephone Company of Nevada indicating that Valley will be authorized to use Bell's access road under certain terms and conditions and that it stands ready to negotiate with Alta for the right to utilize its access road to the mountain top. Valley also states, based upon an affidavit of Robert K. Packard, that

should the erection of a guyed tower on its proposed site not prove feasible, it has sufficient leeway in the credit proposal advanced to it by RCA to permit the construction of a self-supporting tower. In these circumstances, by the Board will not add an issue to ascertain the feasibility or suitability of Valley's proposed antenna site.[6]

EQUAL EMPLOYMENT OPPORTUNITY ISSUE

24. Western contends that Valley's one page exhibit which purports to describe its equal employment program fails to set forth any specific practices which will be followed by that company to assure equal employment opportunity for minority group members. In the absence of a detailed program, Western contends that an issue should be added to determine what plans, if any, Valley has made with respect to an equal opportunity employment program. In opposition, Valley argues that the Commission has found it qualified in all respects other than those specified in the issues in the order designating the matter for hearing. However, Valley states, since Western has raised the question, Valley is submitting an affidavit of Mr. James E. Rogers, its president, as Exhibit 13, setting forth its equal employment opportunity program. That affidavit sets forth in considerable detail Valley's program to insure nondiscrimination in recruiting, nondiscriminatory practices with respect to placement and promotion and to insure nondiscrimination in all other areas of its employment practices. In view of these details supplied by Valley, an issue inquiring into Valley's program is not warranted.

PUBLIC INSPECTION FILE ISSUE

25. Western requests an issue to determine whether Valley has complied with Section 1.526 of the Commission's Rules, the local public inspection file rule. Petitioner does not question the fact that Valley maintained a public file in Las Vegas or that the file was made available to Western upon request. However, it contends that certain items which should have been in the file at the time of its inspection were not available. Those items petitioner states, consisted of certain letters and some exhibits and pages associated with amendments referred to in the file. In view of these omissions, Western contends, a Section 1.526 issue should be added to this proceeding. In opposition, Valley states that its public inspection file has always been maintained in the office of its local attorney and upon any request this file has been made available. Further, Valley contends that after a careful examination of its file, it has determined that Item 2 of Western's list, Exhibit 7 to the application with a three page amendment, etc., does not exist; the amendment, in fact, deleted the material referred to. Valley also notes that an item described as Exhibit No. 3 by Western would not require new pages and thus was not missing. Valley submits the other documents referred to by Western as exhibits attached to its opposition. According to the affidavit of Thomas E. Lea, Las Vegas attorney for Valley and custodian of Valley's public inspection file, the file has

[6] See ¶ 20 for our ruling concerning cost of obtaining access to the Black Mountain site.

always been maintained in his office and all of the documents referred to on page 24 of Western's motion to enlarge, were available in his office and would have been given to Western's representative had she requested those documents. However, Valley states, the September 27, 1971 letter to the Commission certifying that the public notice was published, a letter of transmittal to the Commission dated November 21 by Rourke of Welch and Morgan and a one page letter from the Commission to Valley dated November 17, 1971 and a two page letter to the Commission dated September 1, 1972 signed by Rourke, all were apparently mistakenly placed in a litigation file. Nevertheless, Valley contends it has made a bona fide good faith effort to maintain a complete public reference file. In view of these facts, the Board is satisfied that while the file may not have been entirely complete at the time it was provided to Western's representative, Valley has in fact made a good faith effort to maintain a complete file for public reference. Its failure to include the items described above in the file was obviously inadvertent and no useful purpose will be served by adding an issue concerning this matter.

SECTION 1.53(b) ISSUE

26. Western notes that Section 1.53(b) of the Commission's Rules states that:

> applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or, absence from the United States. The attorney shall in that event set forth the reason that the application is not signed by the applicant.

Western also notes that under date of October 26, 1971, Valley submitted an amendment which was signed James E. Rogers, by Gerald S. Rourke, attorney in fact; that there was no explanation that Rogers was either physically disabled, or that he was absent from the United States; on November 2, Valley submitted a new certificate page containing the signature of James E. Rogers dated October 26, 1971. This, Western contends, raises questions as to the validity of Rourke's signature on behalf of Rogers and constitutes a violation of Section 1.53(b) of the Commission's Rules which warrants inquiry at the hearing. In opposition, Valley submits the affidavit of James E. Rogers, who states that he is the president and a director of Valley, that Rourke, Washington, D.C. counsel for Valley, was in Las Vegas from Tuesday, October 19 to Friday, October 22 working with Rogers and other members of Valley to prepare an amendment to Valley's application; that all of the materials for the amendment were completed in draft form and were [re]viewed and approved by Rogers; that Rourke returned to Washington, D.C. on Friday, October 22; that the material was typed in final and ready for filing on October 26, 1972; that Rourke had on that date called Rogers to advise him that he had neglected to sign the certification page before Rourke left Las Vegas; and that Rogers and Rourke discussed possible alternatives and concluded that Rourke should sign the amendment as attorney in fact for Rogers so that it could be filed as a matter of right.[7] Rogers states that since he was fully

[7] Amendments filed before a matter is designated for hearing are accepted as a matter of right. Sec. 1.522 of Commission Rules.

familiar with all of the contents of the amendment, he signed a certification page which was forwarded to Rourke and in turn submitted to the Commission to replace Rourke's signature as attorney in fact. It is apparent that Valley has not literally complied with the requirements of Section 1.53(b); however in view of its explanation set forth in Rogers affidavit, it is apparent that his omission was unintentional and that Rogers fully participated in the preparation of the amendment. Thus the *nunc pro tunc* filing of the certification page with Roger's signature does not require an issue in this proceeding.

THE INEPTNESS AND SECTIONS 1.514 OR 1.65 ISSUE

27. Western contends that, assuming arguendo that Valley's representations as to the availability of the loan from the Bank of Nevada and the availability of its affiliation agreements with NBC and its failure to disclose information concerning Sam Cohen were not intentional and do not disqualify Valley on character grounds, there should nevertheless be an issue specified to determine whether these as well as other alleged errors and omissions cited throughout the petition to enlarge demonstrate that Valley has been so inept and careless that it lacks the qualifications to be a station licensee. Western also argues that several alleged instances of substantial changes in the qualifications of various stockholders which have not been reported warrant the inclusion of an issue to determine whether Valley has complied with Section 1.65 of the Commission's Rules. Furthermore, Western alleges that Valley's failure to give an accurate picture of McMillan's financial condition as compared with that set forth in his bankruptcy proceeding and its failure to set forth the principal occupations of Babero, Guy, Moore and Tester raise questions as to whether Valley has complied with Section 1.514 of the Commission's Rules. In view of all of these circumstances, Western contends that most certainly the issues requested must be added to this proceeding. In view of our rulings on the issues previously discussed in this Memorandum Opinion and Order, neither the ineptness issue, the 1.65 issue or the 1.514 issue appear to be warranted. Since Fightlin and Kirshbaum are relying on bank loans to meet their subscription agreements the changes incurred by their real estate transactions have no significant effect on their ability to meet their subscriptions. Guy is also relying upon a loan and it does not appear that his divorce and property settlement will affect his ability to secure the necessary loan. Nor is it likely that Valley's failure to set forth the principal business or occupation of four of its eighteen stock subscribers is likely to be of decisional significance in this proceeding. Thus, no useful purpose would be served by further inquiry into this matter.

28. Accordingly, IT IS ORDERED, That the motion for leave to file a response, filed February 28, 1973, by Las Vegas Valley Broadcasting Co. IS DENIED; the response to reply, filed February 28, 1973, by Las Vegas Valley Broadcasting Co., IS DISMISSED; and the motion to enlarge issues, filed October 6, 1972 by Western Communications, Inc. IS GRANTED to the extent indicated below, and IS DENIED in all other respects.

29. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED by the addition of the following issues:

To determine whether Las Vegas Valley Broadcasting Company can reasonably expect to secure a network affiliation and, if not, the effect on Valley's financial qualifications and its ability to effectuate its program proposal.

To determine the terms and conditions of the proposed bank loan from Nevada State Bank relied upon by Valley, whether Valley can meet those terms and conditions, and whether, in light thereof, the proposed loan will in fact be available to it.

To determine all the facts concerning Valley's proposed microwave relay service and their effect on its financial qualifications.

To determine the cost, terms and conditions which must be met by Valley to obtain access to its proposed transmitter site and their effect on its financial qualifications.

To determine in view of the facts adduced pursuant to the foregoing issues, whether Valley is financially qualified to construct and operate its proposed station.

30. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence and proof under the issues added herein SHALL BE on Las Vegas Valley Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-101

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WESTERN COMMUNICATIONS, INC. (KORK-TV), LAS VEGAS, NEV. For Renewal of License	Docket No. 19519 File No. BRCT-327
LAS VEGAS VALLEY BROADCASTING CO., LAS VEGAS, NEV. For Construction Permit for New Television Broadcast Station	Docket No. 19581 File No. BPCT-4465

MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 9, 1973)

BY THE REVIEW BOARD:

1. The Review Board has before it a motion to add an abuse of process issue against Valley Broadcasting Company (Valley), filed November 8, 1972 by Western Communications, Inc. (Western).[1]

2. Understanding of this request will be facilitated by a brief chronology of the events leading up to its filing. Stations KORK-TV, Las Vegas, Nevada, KFSA-TV, Fort Smith, Arkansas, and KOLO-TV, Reno, Nevada, are all owned by Donald Reynolds. Those stations were the subject of an extensive Commission investigation. That investigation resulted in KORK-TV's renewal application being designated for hearing on issues concerning "clipping and double billing". There were allegations of such conduct with respect to KFSA-TV and KOLO-TV. The Commission on the day it designated the KORK-TV renewal application for hearing issued a notice of apparent liability for forfeiture in the amount of $5,000.00 to KFSA-TV. The renewal of KOLO-TV was subsequently granted. Thereafter, Reynolds entered into a contract to sell KFSA-TV to Buford Television, Inc. of Fort Smith, Arkansas. Valley filed a petition to deny the application for assignment of license of KFSA-TV to Buford, alleging that the qualifications of Western to be a licensee of this Commission are at issue in the instant proceeding and that to permit KFSA-TV [2] to be transferred prior to the resolution of Western's qualifications would not be in the public interest. Valley further urged that the proposed assignee is not financially qualified and that the transfer might tend to create a concentration of a media of mass communications in the proposed assignee corporation.

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[1] The Board also has before it oppositions, filed by the Broadcast Bureau and Valley, on November 22, 1972, and a reply, filed December 11, 1972, by Western.

[2] Don Rey, Inc. is wholly owned by Don Reynolds. Western is wholly owned by Don Rey and KSFA-TV, Inc. is wholly owned by Western.

3. Western bases its request for the abuse of process issue on Valley's filing of the above described petition to deny. It contends that Valley made no showing that it was a party in interest to the proposed assignment and that the factual allegations are so frivolous that its petition to deny was obviously filed for the purpose of harassing Western. In support of its contention that Valley's petition was filed for the purpose of harassment, Western submits an affidavit of its counsel, Mr. Czarra to the effect that on October 27, Mr. Rourke, counsel for Valley, suggested to Czarra that Western should withdraw from the competition for the television station in Las Vegas and accept an offer from Valley for the appraised value of its station there. Czarra further states that he advised counsel for Valley that Western did not agree to such a proposal and that counsel for Valley then informed him that so long as Western contested its application for Las Vegas, Valley would oppose any application by Mr. Reynolds to dispose of his other broadcast properties. Further, Western alleges that three days later, on October 30, Valley filed its petition to deny the KFSA–TV application for transfer of control. In these circumstances, Western contends the following issue should be specified:

To determine whether Las Vegas Valley Broadcasting Co. (Valley), an applicant for a new television station in Las Vegas, Nevada, acted in good faith in filing a "Petition to Deny" the assignment application of KFSA–TV, Fort Smith, Arkansas (which is licensed to a subsidiary of Western Communications, Inc., licensee of KORK–TV, whose license renewal application in Las Vegas is consolidated for comparative hearing with Valley's application), or whether Valley has sought to delay or otherwise to obstruct the processing of the KFSA–TV assignment application, or Valley has abused the Commission's processes, and whether, in light of the evidence adduced hereunder, Valley is qualified to be a licensee of the Commission.

4. The Board has carefully examined all of the pleadings involved and is satisfied that Valley has not abused the Commission's processes in filing its petition to deny the proposed KFSA–TV transfer of control. Valley is actively challenging the qualifications of Western to be a licensee of this Commission. While the Board will not undertake to evaluate the merits of Valley's petition to deny, it is nevertheless satisfied that Valley has sufficient legitimate interest in that transfer to negate any inference that the petition was filed merely for the purposes of harassment and delay. Moreover, the alleged conversation between Czarra, counsel for Western, and Rourke, counsel for Valley, concerning the possibility of a settlement of the Las Vegas matter does not, in our view, provide an adequate basis for specifying an abuse of process issue. While the details of this informal conversation between counsel are disputed, it is clear from a careful reading of all of the affidavits that no direct threat to use the Commission's processes unless Western discontinued participation in this proceeding was made, and, in the absence of other evidence tending to support the charge, we do not believe that an evidentiary inquiry into this conversation would serve any useful purpose. The requested issue will therefore be denied.

5. Accordingly, IT IS ORDERED, That the motion to add an abuse of process issue, filed by Western Communications, Inc., on November 8, 1972 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 73R-102

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WESTERN COMMUNICATIONS, INC. (KORK-TV), LAS VEGAS, NEV. For Renewal of License	Docket No. 19519 File No. BRCT-327
LAS VEGAS VALLEY BROADCASTING CO., LAS VEGAS, NEV. For Construction Permit for New Television Broadcast Station	Docket No. 19581 File No. BPCT-4465

MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 9, 1973)

BY THE REVIEW BOARD:

1. The Review Board has before it a third motion to enlarge issues, filed November 20, 1972, by Western Communications, Inc. (Western)[1] seeking the addition of the following issue against Las Vegas Valley Broadcasting Company (Valley):

To determine the facts and circumstances surrounding the failure of Valley to submit complete information as to the other broadcast interests of its proposed Vice President, Programming, Clark Henry Tester, in violation of Section 1.514 of the Commission's Rules, and to determine the effect of the evidence adduced under this issue on Valley's qualifications to be a licensee or on the comparative evaluation of Valley.

2. Western bases its motion on the alleged failure of Valley to report certain broadcast connections of Mr. Clark Henry Tester, a principal of Valley and its proposed vice president for programming and program director. Petitioner contends that its motion is timely filed since it did not learn of Mr. Tester's prior connections with broadcast stations until depositions were taken on November 14, 1972. Western notes that question 19 of Section II of FCC Form 301 asks:

Does applicant or any party to this application have now, or has applicant or any such party had, any interest in, *or connection with*, the following:
(a) Any standard, FM, or television broadcast station? (Emphasis supplied.)

In response to that question, petitioner notes, Valley stated that Clark Henry Tester is presently the curriculum consultant to Station KLVX, Channel 10, Las Vegas, Nevada, which is licensed to the Clark County School District, but failed to include his employment as an announcer during 1966 and 1967 at KBMI (AM), Henderson, Nevada; announcer, sports director, newsman at KBLU (AM)-TV, Yuma, Arizona during the summer of 1968, and announcer at KVNA

[1] There is also before the Board comments filed by the Broadcast Bureau, December 1, 1972; an opposition, filed by Valley on December 5, 1972, and Western's reply, filed December 15, 1972.

(AM) Flagstaff, Arizona while attending college in 1965, and announcer at KEOS (AM), Flagstaff, Arizona, while attending college in 1965. These missions, Western contends, constitute a violation of Section 1.514 and an issue inquiring into the circumstances surrounding Valley's failure to report is warranted. Western cites *Payne of Virginia*, 28 FCC 2d 66, 21 RR 2d 535 (1971) in support of its request.

3. In opposition, Valley states that Mr. Tester did not consider his part-time employment as a radio announcer during his college years and while he was employed as a school teacher to be significant and thus had not included it on the list of his connections with radio stations. Moreover, Valley contends that all of these associations were terminated more than five years prior to the date the application was filed and that in no circumstances should this be regarded as a major omission.

4. The motion to enlarge issues will be denied. While *Payne of Virginia* clearly establishes that all prior connections with AM, FM and TV stations must be reported in response to question 19, that case also held on facts comparable to those in the matter now before us that the omissions were in fact insignificant and *de minimus*, and that an issue was not warranted. We are satisfied, in view of Valley's explanation, that the logic followed in *Payne of Virginia* is equally applicable in this case.

5. Accordingly, IT IS ORDERED, That the third motion to enlarge issues, filed by Western Communications, Inc., on November 20, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION.
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-103

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WESTERN COMMUNICATIONS, INC. (KORK-TV), LAS VEGAS, NEV. For Renewal of License	Docket No. 19519 File No. BRCT-327
LAS VEGAS VALLEY BROADCASTING CO., LAS VEGAS, NEV. For Construction Permit for New Television Broadcast Station	Docket No. 19581 File No. BPCT-4465

MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 9, 1973)

BY THE REVIEW BOARD:

1. The Review Board has before it a motion to enlarge issues, filed by Western Communications, Inc. (Western), on December 27, 1972.[1] In its motion, Western notes that on December 6, 1972, the Commission granted several applications Western had filed for translator and microwave stations to provide service to a number of remote Nevada communities. The stations applied for are part of a system (referred to as the Donrey System) designed to provide television service from Las Vegas, and Reno to several remote Nevada communities. Western contends that this translator and microwave system will bring a first television service to thousands of citizens of Nevada, and a first Nevada service to others, and that, since this system provides substantial public interest benefits to the people of Nevada, issues should be added to this proceeding to take into account on a comparative coverage basis, the new areas which will be provided service by the signals of KORK-TV delivered via microwave and translator to remote communities. Moreover, Western contends that if it is found disqualified to be a licensee, its translator and microwave service will be terminated and all of those citizens of Nevada which are relying on those signals for their only television service will lose that service. The Commission should therefore take into account this affect on the public interest, petitioner asserts, in making its determination as to Western's qualifications. Finally, Western also seeks an issue to determine whether Valley would provide the microwave and translator service should it be granted authority to operate on Channel 3, Las Vegas. In this event, Western contends, an inquiry would also be warranted to determine whether Valley is financially and otherwise qualified to provide such a service.

[1] The Board also has before it: the Broadcast Bureau's opposition, filed January 9, 1973; Valley's opposition, filed January 17, 1972; and Western's reply, filed February 2, 1973.

2. The grants to Western of five translator authorizations and eight microwave relay stations, which were made after the Western and Valley applications were designated for comparative hearing in this proceeding, were made subject to the following condition:

> This authorization is without prejudice to whatever action the Commission may deem appropriate as a result of the outcome in the proceeding in Docket No. 19519.

If Western's authorizations are terminated pursuant to this condition; it would not be qualified to be a licensee in any event and the public interest benefits of the system would be irrelevant. On the other hand, if Western is found qualified in this proceeding, but did not receive a grant, it would not be forced to terminate the system and the threat of voluntary termination clearly should not be a factor in determining which applicant receives a grant in this proceeding. In these circumstances, the Board will not add the issues requested by Western. Moreover, the proposed system is not in operation nor has it yet been constructed. The Commission's grant of the translator microwave system has been appealed by Washoe Empire, filed January 12, 1973, case No. 73–1044, U.S. Court of Appeals for the District of Columbia Circuit. Thus at this stage the ultimate effect of the grants is highly speculative.

3. Accordingly, IT IS ORDERED, That Western's fourth motion to enlarge issues in this proceeding, filed December 27, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-104

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WESTERN COMMUNICATIONS, INC. (KORK-TV), LAS VEGAS, NEV. For Renewal of License	Docket No. 19519 File No. BRCT-327
LAS VEGAS VALLEY BROADCASTING CO., LAS VEGAS, NEV. For Construction Permit for New Television Broadcast Station	Docket No. 19581 File No. BPCT-4465

MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 9, 1973)

BY THE REVIEW BOARD:

1. The Review Board has before it a motion to enlarge the issues in the above captioned proceeding, filed December 27, 1972, by Western Communications, Inc. (Western) seeking the addition of a Section 1.65 issue against Las Vegas Valley Broadcasting Co. (Valley).[1] In support of its request, Western notes that in Valley's opposition to Western's second motion to enlarge issues, Valley stated that it would file a timely amendment to reflect certain changes in the details of its proposed financing, particularly bank letters of commitment to lend two of its stock subscribers the funds which would be required to meet their stock subscriptions. Petitioner also notes that the affidavits from the stock subscribers were dated November 20, or 21, 1972. Thus Valley's application should have been amended by December 19, 1972, Western asserts, as required by Section 1.65 of the Commission's Rules, and, as of the date of filing of Valley's petition, the required amendment had not yet been received by the Commission. The Review Board agrees with the Broadcast Bureau that while Valley should have filed its amendment by December 19, 1972, the purpose of Section 1.65 was effectively achieved by the filing of the affidavits and attached commitment letters which were served on all the parties to this proceeding as of November 20, 1972. Thus Valley's failure to amend, while not to be condoned, is not of sufficient significance to warrant an enlargement of the issues in this already involved and complicated proceeding.

2. Accordingly, IT IS ORDERED, That Western's motion to add a Section 1.65 issue against Las Vegas Valley Broadcasting Co., filed December 27, 1972 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[1] The Board also has before it an opposition, filed by the Broadcast Bureau on January 10, 1973, and an opposition, filed by Valley, on January 17, 1973.

The following are notations of Commission actions which are not printed in full.

APPARENT LIABILITY FOR FORFEITURE

Notice of Apparent Liability for Forfeiture of $2000 to M.C. B/cing Co., KDON, Salinas, Cal. for violations of Sec. 317 of Comm. Act and Sec. 73.119 of Rules on sponsorship identification adopted, February 21, 1973.

Notice of Apparent Liability for Forfeiture of $1000 to KJET, Inc., KJET-FM, Beaumont, Tex. for violations of Sec. 73.285(b), operators, and 72.283 (a), logs, adopted, February 21, 1973.

Notice of Apparent Liability for Forfeiture of $1000 to Williamsburg B/cing Co., Inc., WMBG and WBCI (FM), Williamsburg, Va. for violation of 18 U.S.C. § 1304 (b/c of lottery information) adopted, February 21, 1973.

Notice of Apparent Liability for Forfeiture of $1000 to Minshall B/cing Co., Inc., WCJB-TV, Gainesville, Fla. for failure to comply with sponsorship identification requirements adopted, March 7, 1973.

Notice of Apparent Liability for Forfeiture of $1000 to SoCom, Inc., WLOE, Eden, N.C. for excess power in violation of Sec. 73.52(a) adopted, March 29, 1973.

Notice of Apparent Liability for Forfeiture of $1000 to Cambell B/cing, Inc., WGTM, Wilson, N.C. for violations of Sec. 73.111(a) and 73.67(a)(3) adopted, March 29, 1973.

Notice of Apparent Liability for Forfeiture of $1000 to North Amer. Comm. Corp., KXJB-TV, Valley City, N. Dak. for violation of Sec. 73.679(c) adopted, March 29, 1973.

APPLICATIONS FOR REVIEW AND RECONSIDERATION

Request for Review of staff ruling of January 4, 1973, fairness complaint of George G. Trafton, Jr. against KHJ-TV, Los Angeles, Cal. denied, February 28, 1973.

Applications for Review of Review Board decision denying the applications of Lebanon Valley Radio, Inc. and Radio Catonsville, Inc. for CP's for new b/c facilities in Lebanon, Pa. and Catonsville, Md. denied, February 28, 1973.

Application for Review filed by E. T. ("Brick") Melbraaten regarding transfer of Carter Mountain Transmission Corp. to Mountain Microwave denied, March 14, 1973.

Applications for review of Review Board decision denying CP application of Maritime Comm. Service for new public Class III-B coast station at Mt. Umunhum near Alamaden, Cal. denied, March 29, 1973.

ASSIGNMENTS AND TRANSFERS

Application for consent to voluntary assignment of license for radio Station WDHF-FM, Chicago, Ill. from The National Science Network, Inc. to Metromedia, Inc. granted, March 13, 1973.

Applications for assignment of WWWW (FM), Detroit, Mich. from The McLendon Co. to Starr WWWW, Inc. and WNCN(FM), New York, N.Y. from Nat'l. Science Network, Inc. to Starr WNCN, Inc. granted, March 21, 1973.

Application for consent to assign CP of TV station KBFI(UHF), Dallas, Tex. from Berean Fellowship Foundation, Inc. to The Christian B/cing Network, Inc. granted, March 21, 1973.

AURAL

Application by Cover B/cing, Inc., for FM b/c station CP for Johnstown, Pa. (opposed by Ronald Smith) and co-pending request for waiver of Sec. 73.207 accepted for filing and waiver approved, February 21, 1973.

Application of Iroquois County B/cing Co. for CP for new Class-A FM B/c for Hartford, Wis. granted, March 7, 1973.

Application by B/cing Services, Inc., WGLM (FM), Richmond, Ind. for waiver of Sec. 73.213(f)(1) and CP to move transmitter site to Centerville, Ind. (to Brewer B/cing Corp., WHON (AM) "antenna farm") granted, March 7, 1973.

AURAL—Continued

Application (BPH–7909) for a new commercial FM station for McPherson, Kansas by McPherson B/cing, Inc. granted February 28, 1973.

Application by WKGN, Inc., Knoxville, Tenn. for CP to change transmitter site and companion request for waiver of principal city coverage requirements granted, March 13, 1973.

Application by Mesa B/cing Co. for CP for new Class C—FM b/c station in Grand Junction, Colo. granted subject to conditions, March 21, 1973.

Waiver of Sec. 1.573 granted, and application for new noncommercial educ. FM b/c station for Lancaster, New York by St. Mary's High School accepted, March 21, 1973.

Waiver of Sec. 73.211 granted, and application of Marianas B/cing Corp. for CP for new FM b/c station in Agana, Guam accepted, March 21, 1973.

BROADCAST MATTERS

Format approved for publication of b/c stations' statistics on minority and female employment in b/c industry in 1972 approved, March 7, 1973.

Chief engineer instructed to make study of FM receiver and possibility of changing mileage separations and to bring back a report, March 13, 1973.

Petition by Stern Community Law Firm to revise Rules to make financial data on FCC Form 324 available for public inspection and revise form denied, March 2, 1973.

COMMON CARRIER

Letter to NASA expressing FCC concern over recent public announcement that NASA intends to phase out its programs in satellite communications adopted, February 14, 1973.

Application of Western Union for Sec. 214 authority to discontinue its "2V" public branch office Washington, D.C. granted, February 21, 1973.

Applications of The Western Union Tel. Co. for Sec. 214 authority to discontinue for messenger delivery stations in Wash., D.C. metropolitan area granted, February 26, 1973.

Application of Mountain States Tel. & Tel. Co. for authority to discontinue common carrier CATV distribution service to Manitou Springs, Colo. granted, February 26, 1973.

Application (File No. P–C–8547) by Amer. Tel. & Tel. Co. for Sec. 214 authority to Supp. existing facilities by converting 3 pairs of coaxial tubes in an existing coaxial cable between Airmont, N.Y. and Chesterfield, Mass. from L3 to L5 telephone carrier operation granted, February 26, 1973.

Application by Amer. Tel. & Tel. Co. for Sec. 214 authority to supplement existing facilities by converting coaxial tubes in existing cables between Dranesville, Va. and Monrovia, Md.; Pottstown, Pa. and Wayne, Pa. and Monrovia, Md. and Pottstown, Pa. and Airmont, N.Y. granted, February 26, 1973.

Applications of Western Union for Sec. 214 authority to discontinue its BT. BX and SN branch offices in Wash., D.C. (TD–19730, TD–19741, and TD–20034) granted, February 26, 1973.

Order that further appellate review of *GTE Service Corp.* and *GTE Data Services Inc.* v. *FCC* and *USA*, No. 71–3100, et al. (2d Cir., 1973) not be sought since only two subpoints in rules overturned and scheme not prima facia unreasonable, February 28, 1973.

Application of Southwestern Bell Telephone Co. for authority to discontinue common carrier CATV distribution service at Louisiana, Mo. granted, March 1, 1973.

Microwave applications of Southern Pacific Comm. Co. for service between Los Angeles, San Diego and Houston (File Nos. 4555 & 4558—(1–P–70 et. al.) granted, February 21, 1973.

Applications (File Nos. 2216/2248—Cl.–P–73) filed Sept. 28, 1972 by Amer. Tel. & Tel. for CP's in Point-to-point Microwave Radio Service granted, March 13, 1973.

Microwave applications of Data Transmission Corp. (File Nos. 2906–Cl–P–70 *et. al.*) granted, March 13, 1973.

COMMON CARRIER—Continued

Application by A.T. & T. and Southwestern Bell Tel. Co. for Sec. 214(a) authority to supplement existing facilities by converting four pair of coaxial tubes in existing coaxial cable between Dalles, Tex. and Houston, Tex. from L-3 to L-5 tel. carrier operation granted, March 21, 1973.

Applications for consent to radio authorizations from MCI Mid-Continent Comm., Inc. (File No. 5982-Cl-AP-(33)-73); MCI New England, Inc. (File No. 5983-Cl-AP-(13)-73); MCI Texas-Pacific, Inc. (File No. 5984-CL-AP-(53)-73); MCI North Central, Inc. (File No. 5986-Cl-AP-(29)-73); MCI Pacific Coast, Inc. (File No. 5985-Cl-AL-73), all to MCI Telecomm. Corp. granted, March 29, 1973.

Application of All America Cables and Radio, Inc. for additional 68 satellite voice circuits between Cayey, P.R. and satellite(s) over Atlantic Ocean, for service between P.R., V.I. and U.S. mainland (File No. P-C-7380-2) granted and previous order modified, March 28, 1973.

COMPLAINTS AND COMPLIANCE

Report of mail received in Broadcast Bureau for month of January 1973 noted, February 28, 1973.

Order and Notice of Apparent Liability that designates renewal application of Station KWDR, Del Rio, Tex. for hearing and includes alternate forfeiture sanction adopted, March 7, 1973.

Letter responding to request by Emmett Cronan for advisory opinion on proposal to organize a "news network" furnishing hourly to Los Angeles area stations would not endorse a particular program, but indicated that on facts no apparent rule violations present, March 7, 1973.

Letter denying complaint of Action for Childrens Television against various TV stations for b/c of Television Information Office spot announcement extolling benefit for children adopted, December 14, 1972.

Report of mail received in Broadcast Bureau for Month of February 1973 noted, March 21, 1973.

DESIGNATION FOR HEARING

Informally opposed applications for CP's for new Commercial FM b/c stations in Reno, Nevada by B.B.C., Inc. and Kidd Comm., Inc. designated for hearing, February 21, 1973.

Mutually exclusive applications for new standard b/c CP's (for facilities of WYYD, Mount Dora, Fla.) by Lake Radio, Inc. and Golden Triangle B/cing Co. designated for hearing, March 7, 1973.

Mutually exclusive applications fo CP's for new commercial FM b/c station in Geneva, N.Y. by Radio Geneva, Inc. and Buccaneer B/cing Ltd. designated for hearing, March 13, 1973.

Mutually exclusive applications for CP's for new standard b/c (for facilities of KWLG, Wagoner, Okla.) by NEO B/cing Co. and William Haydon Payne designated for hearing, March 21, 1973.

EXTENSION OF TIME

Motion for Extension of Time filed by Assoc. of Independent TV stations, Inc. granted, February 21, 1973.

Motion for Extension of Time by National Cable Television Assoc. after receiving information under Freedom of Information Act regarding filing of comments and reply comments in Docket No. 19658 (Schedule of Fees) granted, February 26, 1973.

Request for extension of time to file Petition to Deny transfer application of Adams Getschal B/cing Co., Inc., WSUF, Patchogue, N.Y. from Lee Gilbert, James Putbrese and Keith Putbrese to WSUF B/cing Co., Inc. granted, February 20, 1973.

GENERAL MATTERS

Letter to U.S. Congressman John E. Moss adopted concerning the non-public nature of proceedings in Docket No. 19716 (obscene programming), March 29, 1973.

Certain modifications of Commission's Research and Policy Studies Program FY 1973 approved, March 29, 1973.

HEARING MATTERS

Petition for modification of 35 FCC 2d 1 decision (regarding network programming for XETV, Tjuana, Mex. for b/c back to San Diego market) by ABC, Inc., Western T/cers, Inc., Radio-Television, S.A. and Bay City Television, Inc. granted since party resolution quicker than previous order which effective only after complete judicial review, March 2, 1973.

NOTICE OF PROPOSED RULE MAKING

Notice of Proposed Rule Making to Amend. Sec. 73.202(b) to assign FM channel to either Costalia or Sandusky, Ohio in response to petition of The Wayside Temple Church adopted, February 14, 1973.

Notice of Proposed Rule Making to Amend Sec. 73.202(b) to assign FM channel to Flint, Mich. in response to petitions of Flint Family Radio, Inc. and Sherwood B/cing, Inc. adopted, February 14, 1973.

Notice of Proposed Rule Making to Amend Sec. 73.202(b) to assign First Class-A FM Channels to Wilmington, Ill.; Many, La.; Mayock, N.C.; Lake Providence, La.; Newton, Miss.; Bay Springs, Miss.; York, Ala.; Rehobath Beach, Del.; Canton, Tex.; Brandon, Miss.; Southport, N.C.; Harrison, Mich.; Greenfield, Mo.; and Belhaven, N.C. adopted, February 14, 1973.

Notices of Inquiry and Proposed Rule Making looking toward establishment of rules governing the design, installation and maintenance of sampling systems utilized in stations using directional antennas to provide signals to activate antenna monitors adopted, February 21, 1973.

Notice of Proposed Rule Making to amend Part 83, Stations on Shipboard in the Maritime Services, to permit use of Frequencies 121.5 MHz and 243 MHz by ship stations, survival craft stations, and emergency position indicating radiobeacon stations adopted, February 21, 1973.

Notice of Proposed Rule Making to amend Sec. 73.606(b), TV Table of Assignments, to substitute channel assignments to Fresno, Calif. in response to Capital Cities B/cing Corp. (WFSN-TV) petition adopted, March 7, 1973.

Notice of Proposed Rule Making to amend Part 81 to provide for use of maritime mobile repeater stations in the State of Alaska adopted, March 7, 1973.

Notice of Proposed Rule Making to amend Part 87 to provide for procedures to notify Commission of aircraft operating under a fleet license adopted, March 7, 1973.

Notice of Proposed Rule Making to amend 73.202(b) and Order to Show Cause which proposes for consideration various possible FM assignments to Sault St. Marie, Mich. adopted, March 13, 1973.

Notice of Proposed Rule Making to amend Sec. 73.202(b) and Order to Show Cause regarding Park Rapids, Albany, Sauk Rapids-St. Cloud, Minn. adopted, March 13, 1973.

Notice of Proposed Rule Making to amend Sec. 73.202(b), Table of FM Assignments, to add channel in Yorktown, Va., granted in response to petition of William M. Eacho and William Swartz over opposition of Hampton Roads B/cing Corp., March 2, 1973.

Notice of Proposed Rule Making to amend Secs. 73.40, 73.49, 73.60, 73.63, 73.89, 73.113, 73.114, 73.252, 73.255, 73.283, 73.284, 73.295, 73.297, 73.317, 73.330, 73.331, 73.552, 73.555, 73.583, 73.584, 73.595, 73.596, 73.638, 73.612, 73.687, 73.690, 73.692 and 73.693 concerning frequency monitors and maintenance adopted, March 21, 1973.

Notice of Proposed Rule Making to amend Sec. 73.202(b), FM Table of Assignments, to assign additional channel to Yakima, Wash. adopted, March 29, 1973 (in response to applications of KUTI Communicators, Inc. and KQOT, Inc.).

ORAL ARGUMENT

Order adopted as amended to revise schedule of appearances in Charles W. Jobbins, et al. proceeding in light of Donnelly C. Reeves notice of appearance and Goodson-Todman B/cing, Inc. request for rebuttal time, March 7, 1973.

Order for Oral Presentation of Docket 18262 regarding future use of 806–960 Mhz frequency band and amendment of Parts 2, 18, 21, 73, 74, 89, 91 and 93 relative to land mobile service adopted, March 13, 1973.

Request by Donnelly C. Reeves to extend his oral argument time from 10 to 15 minutes on Docket 15752 (Charles W. Jobbins, et al.) denied, March 13, 1973.

Oral argument regarding application of Belk B/cing Co. of Fla. Inc. for renewal of license of WPDQ, Jacksonville, Fla. scheduled, March 21, 1973.

RENEWAL MATTERS

Renewal applications of Pacific B/cing Corp. (KUAM–TV, Guam, M.I.) for renewal of licenses of TV translator stations Ko64O, Ko6HA, Ko7HQ and K13HV granted for short term renewals co-extensive with term of primary station, March 21, 1973.

Information on Stations in April 1, 1973 renewal group (Alabama and Georgia) programming proposals noted, March 29, 1973.

Review of practices and policies in equal employment opportunity for stations in Alabama and Georgia noted, March 29, 1973.

Disposition of April 1, 1973 broadcast renewal applications (Alabama and Georgia) noted, March 29, 1973.

SAFETY AND SPECIAL RADIO SERVICE

Request of Sea Rovers, Inc. for extension of the waiver allowing operations of the radio stations aboard the small passenger vessels AY–AY and PROVIDENCIA by person holding only a restricted radiotelephone operator permit granted, March 7, 1973.

TV

Application of Amer. B/cing Cos., Inc. for CP to install alternate main transmitter for commercial television b/c station WABC–TV, N.Y., N.Y. granted, but subject to outcome of current renewal proceeding, February 14, 1973.

Application of Boston Heritage B/cing, Inc., Boston, Mass. for authority to conduct subscription TV operations in conjunction with WQTV granted, March 7, 1973.

Request of Spanish Int'l Comm. Corp. for extension of authority to continue the operation of TV b/c station KFTV, Hanford, Cal. as satellite of commonly owned KMEX–TV, Los Angeles, Cal. granted, March 13, 1973.

WAIVER OF RULES

Amer. Satellite Corp. request for Sec. 319(d) waiver of permit to construct 3 satellites granted, February 14, 1973.

Request of Roger W. Schoeder of Holbrook, Nebr. for waiver of Sec. 87.201 (d) to permit one-way air-to-ground communications direct from worker activities granted, February 21, 1973.

Request submitted by Palmas Del Mar Co. for waiver of Sec. 91.554(b)(18) of the Business Radio Service to permit the use of the 952–960 MHz band control-repeater link for operational fixed traffic granted, February 28, 1973.

Request of Jay Sadow, WRIP–FM, Rosville, Ga., for waiver of Sec. 73.213(f)(1) granted and application accepted, March 7, 1973.

Request by Hillebrand Electronics, WMHE, Toledo, Ohio for waiver of Sec. 73.213(f)(1), granted and application for CP to move transmitter site accepted, February 28, 1973.

Requests by Rush County B/cing Co., Inc., WROR, Rushville, Ind. for waiver of Sec. 73.213(f)(1) and CP for auxiliary installation granted, March 13, 1973.

Application by The Board of Trustees of Leland Stanford University, KZSU, Standford, Cal. to increase facilities accepted and waiver of Sec. 1.573 granted, March 13, 1973.

MISCELLANEOUS

Letters to the Office of Telecomm. Mgmt. and Dept. of State regarding COMSAT Instruction Procedures with regard to INTELSAT matters adopted, March 7, 1973.

Informal motion for stay of hearings scheduled to commence in Las Vegas, Nev. on March 12, 1973 filed by Western Comm., Inc. (KORK–TV) dismissed, March 7, 1973.

Letter to attorney of Ira W. Rooks authorizing settlement of tort claim for $6,014.54 adopted, March 19, 1973.

SUBJECT DIGEST

ADVERTISERS, PROTECTION OF

COMPLAINT ALLEGING THAT LICENSEE SUBORDINATED PUBLIC TO PRIVATE INTEREST BY FORBIDDING NEWS ITEMS OFFENSIVE TO ADVERTISERS AND TERMINATION OF COMPLAINANTS EMPLOYMENT DISMISSED. SINCE DISMISSAL WAS DUE TO COMPLAINANTS ABUSE OF STATION POLICY IN BROADCASTING AND LEAVING STATION WITHOUT NOTICE ***BRAMBLE, MIKE*** 39FCC2D0992

AFFIDAVIT FALSE

PETITION TO ENLARGE ISSUES TO DETERMINE IF AN APPLICANT KNOWINGLY SOLICITED A FALSE AND MISLEADING STATEMENT AND THE EFFECT THEREOF ON HIS BASIC AND OR COMPARATIVE QUALIFICATIONS IS GRANTED SINCE THERE ARE BOTH CONFLICTS IN AFFIDAVITS AND UNDISPUTED FACTS WHICH WARRANT AN EVIDENTIARY HEARING ***WIOO, INC.*** 39FCC2D0351.

AFFIDAVIT NEED FOR

JOINT PETITION FOR ENLARGEMENT OF ISSUES TO INCLUDE AN ISSUEOF WHETHER PROPOSED TARIFF RATE CHANGES ARE CONSISTENT WITH PRICE COMMISSION GUIDELINES DENIED, SINCE THE ISSUES AS ORIGINALLY STATED WILL COVER THIS AND THE MOTION WAS PRECEDURALLY DEFICIENT LACKING AFFIDAVIT (SEC 1 229(C)) ***AMERICAN TELEVISION RELAY, INC.*** 39FCC2D0545

AGREEMENT REIMBURSEMENT

APPLICATION FOR NEW FM BROADCAST STATION GRANTED AND AGREEMENT FOR PARTIAL REIMBURSEMENT APPROVED PURSUANT TO 1 525(A) SINCE THE AGREEMENT WOULD NOT UNDULY IMPEDE FAIR DISTRIBUTION OF RADIO SERVICE ***LANKFORD B/CING CO.*** 39FCC2D0163

AGREEMENT TO WITHDRAW

APPEAL FROM ADM LAW JUDGE RULING DISMISSING APPLICATION WITHOUT REQUIRING PUBLICATION GRANTED AND SET ASIDE JOINT AGREEMENT FOR DISMISSAL OF APPLICATION DENIED ***CRAIN, ALBERT L.*** 39FCC2D0878

ALLEGATIONS SUFFICIENCY OF

PETITION FOR RECONSIDERATION GRANT OF A LICENSE RENEWAL APPLICATION (30FCCID958) IS DENIED SINCE PETITIONERS ALLEGATIONS CONCERNING COMMUNITY SURVEY PROGRAMMING AND EMPLOYMENT AND COMMERCIAL PRACTICES WERE NOT SPECIFIC (SEC 309(D)) ***WKBN BROADCASTING CORP.*** 39FCC2D0116

COMPLAINT REQUESTING REVOCATION OF STATION LICENSE FOR INACCURATE AND MISLEADING NEWS BROADCASTS AND HARASSMENT DENIED SINCE THE ALLEGATIONS ARE UNSUPPORTED BY EVIDENCE ***MARTIN-TRIGONA, ANTHONY R.*** 39FCC2D0069

AMENDMENT

OF TWO PETITIONS FOR LEAVE TO AMEND APPLICATIONS AN AMENDMENT FOR COMMUNITY SURVEY IS DISMISSED AS MOOT AND THE OTHER DEALING WITH STOCK DIVESTITURE GRANTED SINCE IT IS FOR GOOD CAUSE AND WILL NOT WORK TO THE DETRIMENT OF ANY OTHER APPLICANT ***JOBBINS, CHARLES W.*** 39FCC2D0595

AMENDMENT, MAJOR

APPEAL FROM ORDER GRANTING PETITION FOR LEAVE TO AMEND APPLICATION TO CHANGE THE TRANSMITTER SITE, DENIED SINCE THE AMENDMENT IS NOT MAJOR BECAUSE IT NEITHER ENLARGES THE SERVICE CONTOUR, SIGNIFICANTLY CHANGES THE LOCATION OF POINTS OF COMMUNICATION OR MATERIALLY ALTERS PROPOSED SERVICE. ***EMPIRE COMM. CO.*** 39FCC2D0143

ANTENNA CHANGE

PART 74 AND SEC. 78.109 (A) AMENDED AS TO APPLICATIONS FOR CHANGES IN HEIGHT OR DIRECTION OF ANTENNAS. ***EQUIPMENT CHANGES*** 39FCC2D0924

ANTENNA DIRECTIONAL

PART 74 AND SEC. 78.109 (A) AMENDED AS TO APPLICATIONS FOR CHANGES IN HEIGHT OR DIRECTION OF ANTENNAS. ***EQUIPMENT CHANGES*** 39FCC2D0924

ANTENNA HEIGHT

PART 74 AND SEC. 78.109 (A) AMENDED AS TO APPLICATIONS FOR CHANGES IN HEIGHT OR DIRECTION OF ANTENNAS. ***EQUIPMENT CHANGES*** 39FCC2D0924

ANTENNA STRUCTURE, COMMON USE OF,

APPLICATION TO MODIFY CLASS IV LICENSE BY DISMANTLING ONE OF TWO TOWERS AND OPERATING NON-DIRECTIONALLY DURING DAYTIME DENIED, SINCE BENEFITS OF PRESENT DIRECTIONAL DAYTIME OPERATION OUTWEIGH OTHER CONSIDERATIONS AND APPLICANT FAILED TO MEET THE PREPONDERANT NEED TEST. ***OLYMPIAN B/CING CORP.*** 39FCC2D0787

APPEAL EXAMINER OPINION

APPEAL FROM ADMINISTRATIVE JUDGES ORDER GRANTING APPLICATION FOR REIMBURSEMENT, GRANTED AND ORDER FCC 72M-1595 IS SET ASIDE PENDING RESOLUTION OF OUTSTANDING CHARACTER ISSUE AGAINST APPLICANT. ***ST. CROSS B/CING, INC.*** 39FCC2D0512

APPEAL FCC DECISION

REQUEST FOR IMMEDIATE GRANT OF LICENSE ASSIGNMENT AND RESCINDING OF DEFERRAL ACTION, DENIED SINCE THE PUBLIC INTEREST WOULD BEST BE SERVED BY CONTINUATION OF THE DEFERRAL UNTIL A PENDING APPEAL BEFORE THE COURT OF APPEALS IS DECIDED. ***WEBSTER, WALTER E. JR., RECEIVER*** 39FCC2D0538

APPEAL FROM EXAMINERS ADVERSE RULING

APPLICATION FOR REVIEW OF ORDER DISMISSED WITHOUT PREJUDICE SINCE SEC. 1.301(B) PRECLUDES REVIEW ABSENT A WAIVER WHICH HAS NOT BEEN OBTAINED. ***ALABAMA EDUC. TV COMM.*** 39FCC2D0123

APPEAL FROM ORDER GRANTING PETITION FOR LEAVE TO AMEND APPLICATION TO CHANGE THE TRANSMITTER SITE, DENIED SINCE THE AMENDMENT IS NOT MAJOR BECAUSE IT NEITHER ENLARGES THE SERVICE CONTOUR, SIGNIFICANTLY CHANGES THE LOCATION OF POINTS OF COMMUNICATION OR MATERIALLY ALTERS PROPOSED SERVICE. ***EMPIRE COMM. CO.*** 39FCC2D0143

APPEAL FROM RULING OF HEARING EXAMINER DENYING REQUEST TO ADDUCE EVIDENCE OF COMPETITORS UNUSUALLY BAD PAST B/CST PERFORMANCE GRANTED. APPEAL FROM DENIAL OF REQUEST TO PRESENT EVIDENCE OF PETITIONERS UNUSUALLY GOOD PAST B/CST PERFORMANCE DENIED, BOTH ON THE BASIS OF THRESHOLD SHOWINGS. ***HOLT, CHARLES W.*** 39FCC2D0776

APPEAL FROM ADM. LAW JUDGE RULING, DISMISSING APPLICATION WITHOUT REQUIRING PUBLICATION, GRANTED AND SET ASIDE. JOINT AGREEMENT FOR DISMISSAL OF APPLICATION DENIED. ***CRAIN, ALBERT L.*** 39FCC2D0878

APPEAL FROM REVIEW BOARD

APPEAL FROM REVIEW BOARD DECISION 33FCC2D324 GRANTING APPLICATION TO CHANGE FACILITIES AND DENYING COMPETING APPLICATION AFFIRMED AS BEING IN THE PUBLIC INTEREST. ***JOHNSON, MEREDITH COLON*** 39FCC2D0782

APPLICATION ACCEPTANCE OF

APPLICATIONS REQUESTING AUTHORITY TO OPERATE STATION ACCEPTED FOR FILING SINCE IN CONFORMITY WITH COMMISSION RULES, EXCEPT FOR ONE WHICH IS ACCEPTED ON CONDITION THAT WITHIN 30 DAYS IT SHALL BE AMENDED TO INCLUDE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM ON SECTION VI OF FCC FORM 301 IN ACCORDANCE WITH REQUIREMENTS OF SEC. 73.125(C). 73.125 C . ***W.M.E.D. ASSOCIATES, INC.*** 39FCC2D0292

APPLICATION AMENDMENT OF

PETITION FOR LEAVE TO AMEND TO UPDATE APPLICATION PURSUANT TO SEC. 1.65 GRANTED SINCE NO OBJECTIONS HAVE BEEN TIMELY RAISED. ***TRI COUNTY B/CING CO.*** 39FCC2D0112

PETITION FOR LEAVE TO AMEND TO UPDATE APPLICATION GRANTED PURSUANT TO SEC. 1.65 SINCE NO TIMELY OBJECTIONS WERE FILED. ***JEFFERSON PILOT B/CING CO.*** 39FCC2D0469

APPLICATION AM, PROCESSING OF

PART 73 OF THE RULES AMENDED REGARDING AM STATION ASSIGNMENTSTANDARDS AND THE RELATIONSHIP BETWEEN THE AM AND FM BROADCAST SERVICES. ***B/CST STATION ASSIGNMENT STANDARDS*** 39FCC2D0645

APPLICATION DENIED

PETITION FOR RECONSIDERATION OF DENIAL OF AN APPLICATION FORFAILURE OF FINANCIAL QUALIFICATIONS AND PETITIONS TO AMEND APPLICATION DENIED SINCE NO NEW FACTS HAVE BEEN ADVANCED. ***ERWIN O CONNOR B/CING. CO.*** 39FCC2D0146

APPLICATION FOR REVIEW

APPLICATIONS FOR REVIEW OF DECISION 33FCC2D749 DENYING APPLICATIONS AND FOR LEAVE TO AMEND, DENIED SINCE FILED LATE AND EVIDENCE TENDERED WAS READILY AVAILABLE BEFORE ISSUANCE OF INITIAL DECISION. ***STEPHENSON, HARRY D. AND ROBERT R.*** 39FCC2D0279

APPLICATION FOR REVIEW OF SEC. 315 POLITICAL BROADCAST 35 FCC 2D 664, DENIED. ***POTTER, CHARLES O.*** 39FCC2D0179

APPLICATION FOR REVIEW OF BROADCAST BUREAUS RULING, 34 FCC 2D 604 , DENIED SINCE IT IS BELIEVED TO BE CORRECT. ***ERICKSON, WILLIAM E. MR.*** 39FCC2D0537

APPLICATION FOR REVIEW OF A REVIEW BOARD DECISION, 29 FCC 2D 533 , GRANTING APPLICATION FOR VACATED FREQUENCY, GRANTED DUE TO SERIOUS PUBLIC INTEREST QUESTIONS RAISED CONCERNING CHARACTER QUALIFICATIONS OF SUCCESSFUL APPLICANT, AND ORAL ARGUMENT ORDERED WITH ALL APPLICANTS PARTICIPATING. ***JOBBINS, CHARLES W.*** 39FCC2D0597

APPLICATION FOR REVIEW OF BROADCAST BUREAU RULING IN COMPLAINT PROCEEDING DENIED. ***CLUB PALMACH RIFLE & PISTOL CLUB*** 39FCC2D0997

APPLICATION GRANTED

APPLICATION FOR NEW FM STATION GRANTED UPON FINDING APPLICANT FINANCIALLY QUALIFIED. ***WNER RADIO, INC.*** 39FCC2D0860

APPLICATION INCOMPLETE

PETITION TO ENLARGE ISSUES GRANTED IN PART TO INCLUDE AN ISSUE AS TO FAILURE TO REPORT REQUISITE INFORMATION (SEC. 1.514(A)), AND THE EFFECT IF ANY ON THE APPLICATION SINCE THERE APPEARS TO BE A FAILURE TO LIST ALL LIABILITIES. REQUEST FOR STAFFING AND ANTENNA SITE ISSUES, DENIED. ***COLORADO WEST B/CING INC.*** 39FCC2D0407

APPLICATION PROCESSING OF

PETITION FOR RECONSIDERATION OF AN ORDER DEFERRING ACTION ONAPPLICATION 35 FCC2D776 , PENDING RESOLUTION OF A REVOCATION PROCEEDING INVOLVING A COMPETING APPLICATION FOR RENEWAL AND DESIGNATION FOR HEARING, DENIED SINCE THE REVOCATION PROCEEDING IS NEAR COMPLETION. ***RADIO STAMFORD, INC.*** 39FCC2D0084

RADIO STAMFORD, INC. DECISION DENYING RECONSIDERATION OF 35 FCC 2D 776 ORDER DENYING DESIGNATION OF COMPETING APPLICATION FOR COMPARATIVE HEARING HAS APPEAL PENDING, RADIO STAMFORD, INC. V. FCC D.C. CIR. 73-1201 . 39FCC2D0084

APPLICATION PUBLIC INSPECTION OF

APPLICATION FOR LICENSE RENEWAL GRANTED SINCE THE PETITION TO DENY FAILED TO ESTABLISH MATERIAL QUESTION FACT (SEC. 309 (D)), CONCERNING EMPLOYMENT PRACTICES, PROGRAMMING AVAILABILITY OF PUBLIC FILE AND ASCERTAINMENT OF COMMUNITY PROBLEMS. ***MAHONING VALLEY B/CING CORP.*** 39FCC2D0052

APPLICATION FOR AM STATION GRANTED SINCE FAILURE TO PUBLISH LOCAL NOTICE AT REQUIRED TIME (SEC. 1.580(C)), FAILURE TO HAVE COPY FOR PUBLIC INSPECTION, AND FAILURE TO REPORT A POWER INCREASE APPLICATION (SEC. 1.514) ARE NOT SUFFICIENTLY SERIOUS TO DISQUALIFY THE APPLICANT. ***FRANKLIN BROADCASTING CO.*** 39FCC2D0032

APPLICATION RE-TENDERED

PETITION FOR RECONSIDERATION OF ORDER INVOLVING PROCESSING AND PUBLIC NOTICE PRECEDURES FOR AVIATION SERVICE APPLICATIONS GRANTED AND AMENDMENT OF SEC. 1.962(E), CONCERNING NOTICE WHERE APPLICATION IS RETURNED FOR CORRECTION, ADOPTED. ***APPLICATIONS - SAFETY AND SPECIAL*** 39FCC2D0124

APPLICATION RENEWAL OF

APPLICATION FOR LICENSE RENEWAL IS DESIGNATED FOR HEARING SINCE SUBSTANTIAL AND MATERIAL QUESTIONS OF FACT CONCERNING ASCERTAINMENT OF COMMUNITY NEEDS AND MISCONDUCT AT A STATION HAVE BEEN RAISED PURSUANT TO 309(D) AND (E). ***WOIC, INC.*** 39FCC2D0355

APPLICATION SPECIAL TEMPORARY AUTHORITY

APPLICATION FOR WAIVERS, FOR ACCEPTANCE, AND FOR SPECIAL TEMPORARY AUTHORITY TO OPERATE SILENT AM AND FM STATIONS GRANTED AND SECS. 1.516(C), 1.517(C) ARE WAIVED TO ALLOW EARLY CONSIDERATION OF PERMANENT AUTHORIZATION PURSUANT TO SEC. 309(F) SINCE EXTRAORDINARY CIRCUMSTANCES EXIST TO RESTORE THE ONLY LOCAL BROADCAST SERVICES AVAILABLE. ***MID-MICHIGAN B/CING CORP.*** 39FCC2D0173

APPLICATION, CURRENT INFORMATION

FAILURE TO COMPLY WITH SEC. 1.65 OF THE RULES BY NOT AMENDING APPLICATION TO REFLECT INTERESTS OF PRINCIPALS, HELD TO BE AN INADVERTENT OMISSION AND HENCE NOT DISQUALIFYING. ***SOUTHLAND, INC.*** 39FCC2D0270

PETITION TO ENLARGE ISSUES GRANTED TO INCLUDE SEC. 1.65 AND BASIC QUALIFICATIONS ISSUES SINCE CHANGES IN BROADCAST AND OTHER BUSINESS INTERESTS WERE REPORTED LATE. ***SOUTHERN B/CST CO.*** 39FCC2D0268

PETITION TO ENLARGE ISSUES GRANTED IN PART TO INCLUDE AN ISSUE AS TO FAILURE TO REPORT REQUISITE INFORMATION (SEC. 1.514(A)), AND THE EFFECT IF ANY ON THE APPLICATION SINCE THERE APPEARS TO BE A FAILURE TO LIST ALL LIABILITIES. REQUEST FOR STAFFING AND ANTENNA SITE ISSUES, DENIED. ***COLORADO WEST B/CING INC.*** 39FCC2D0407

PETITION TO ENLARGE ISSUES TO INCLUDE A SEC. 1.65 ISSUE DENIED SINCE THE MATTER ALLEGED TO HAVE BEEN UNREPORTED WAS FULLY REPORTED IN OTHER COMMISSION DECISIONS AND OPINIONS. ***SALEM BROADCASTING CO., INC.*** 39FCC2D0500

PETITION FOR LEAVE TO AMEND TO UPDATE APPLICATION FOR CP GRANTED. ***MEDIA, INC.*** 39FCC2D0786

PETITION FOR RECONSIDERATION OF REVIEW BOARD DECISION (37 FCC2D686) DENYING APPLICATION TO OPERATE FORMER FACILITIES OF KICM ON BASIS OF UNAUTHORIZED TRANSFER OF CONTROL, INTRODUCTION OF EVIDENCE, FIANACIAL, MISREPRESENTATION, SEC. 1.65 AND EX PARTE ISSUES, DENIED SINCE SAME ADVERSE DETERMINATION ON THE ISSUES EXISTS. ***VOICE OF REASON, INC.*** 39FCC2D0847

MOTION TO ENLARGE ISSUES TO INCLUDE SEC. 1.65 ISSUE DENIED SINCE FAILURE TO AMEND IS NOT OF SUFFICIENT SIGNIFICANCE TO WARRANT FURTHER COMPLICATING THE PROCEEDING. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1098

AREA OF COVERAGE

APPLICATION PREVIOUSLY DISMISSED (27FCC2D66) ON DUOPOLY RULE(SEC. 73.35) REINSTATED AND DESIGNATED FOR HEARING ON ISSUES AS TO FINANCIAL, AREAS AND POPULATIONS, 307(B), OVERLAP, AND COMMUNITY NEEDS. REQUESTS FOR WAIVER OF SECS. 1.580(B), 1.580(B), 1.569(B)(2)(I) (TRANSMITTER SITE LOCATION) AND SECS. 1.571(C) AND 1.227(B)(1) ARE GRANTED. ***QUINNIPIAC VALLEY SERVICE, INC.*** 39FCC2D0948

ASSIGNMENT OF LICENSE, VOLUNTARY -

APPLICATION FOR ASSIGNMENT OF LICENSE IS GRANTED. ***WDSU-TV, INC.*** 39FCC2D0534

ASSIGNMENT OF STANDARD AND FM LICENSES APPROVED. ***KOPS-MONOHAN COMM., INC.*** 39FCC2D0470

PETITION TO DENY ASSIGNMENT OF LICENSE BY RECEIVER DENIED SINCE THE COURT WHICH HAS JURISDICTION OF THE RECEIVER HAS APPROVED THE ASSIGNMENT SUBJECT TO COMMISSION APPROVAL, AND PETITIONER, AN UNSUCCESSFUL PROSPECTIVE ASSIGNEE, HAS NO STANDING BEFORE THE COMMISSION. (SEC. 310(B)). ***GORMAN, LEON P., JR. RECEIVER*** 39FCC2D0037

PROTEST TO ASSIGNMENT OF LICENSE ON GROUNDS THAT THE ASSIGNMENT WILL ELIMINATE CURRENT PROGRAM FORMAT DENIED SINCE PROGRAM FORMAT IS AVAILABLE FROM OTHER STATIONS AND THE STATION BEING ASSIGNED HAS BEEN OPERATING AT A LOSS. ***NATIONAL BROADCASTING CO, INC.*** 39FCC2D0480

REQUEST FOR IMMEDIATE GRANT OF LICENSE ASSIGNMENT AND RESCINDING OF DEFERRAL ACTION, DENIED SINCE THE PUBLIC INTEREST WOULD BEST BE SERVED BY CONTINUATION OF THE DEFERRAL UNTIL A PENDING APPEAL BEFORE THE COURT OF APPEALS IS DECIDED. ***WEBSTER, WALTER E. JR., RECEIVER*** 39FCC2D0538

APPLICATION FOR ASSIGNMENT OF LICENSE IN THE DOMESTIC LAND MOBILE RADIO SERVICE GRANTED SINCE NO FACTUAL CONTENTIONS TO BASE A CLAIM OF DISCRIMINA-

TORY RATES OR PUBLIC INCONVENIENCE HAVE BEEN MADE TO WARRANT A HEARING UNDER 309 (D)(2). ***NORTHERN MOBILE TELEPHONE CO.*** 39FCC2D0608

APPLICATIONS FOR ASSIGNMENT OF LICENSES GRANTED SUBJECT TO THE OUTCOME OF AN INVESTIGATION INTO POSSIBLE LICENSEE MISCONDUCT AND ELIMINATION OF A CROSS-INTEREST CONFLICT. ***TWIN STATES B/CING CO.*** 39FCC2D0835

APPLICATION FOR ASSIGNMENT OF LICENSE GRANTED SINCE ASSIGNEEIS FULLY QUALIFIED AND THE PUBLIC INTEREST WOULD BE SERVED BY STRENGTHENING THIS SMALL COMMUNITY STATION. ***WAUCHULA B/CING CO.*** 39FCC2D0855

ASSIGNMENT RENEWAL OF LICENSE CONSIDERED BEFORE

PETITION FOR RECONSIDERATION OF DENIAL OF PETITION REQUESTING RENEWAL OF LICENSE AND TRANSFER OF CONTROL, DENIED SINCE SUBSTANTIAL PROFIT WOULD COME TO ALLEGED WRONGDOER IF GRANTED AND CONTINUATION OF PROCEEDING HAS NOT BEEN SHOWN TO BE DAMAGING TO PETITIONERS HEALTH. ***WALTON B/CING CO.*** 39FCC2D1074

AUDITORY TRAINING DEVICES

PETITION FOR ORDERS TO SHOW CAUSE ALLEGING THAT PRODUCTION OF WIRELESS AUDITORY TRAINING MICROPHONES ARE IN VIOLATION OF THE RULES, AND FOR A CEASE & DESIST ORDER, DISMISSED, SINCE AN AGREEMENT TO CORRECT AND COMPLY HAS BEEN MADE. ***ELECTRONIC FUTURES, INC.*** 39FCC2D0141

PETITIONS FOR RECONSIDERATION OF AMENDMENT OF PART 15 (35 FCC 2D 677) TO PROVIDE REGULATIONS FOR THE OPERATION OF WIRELESS AUDITORY TRAINING SYSTEMS WITHOUT INDIVIDUAL LICENSES IN THE 72-73 MHZ AND 75.4-76 MHZ BANDS DENIED BUT MEASUREMENT PROCEDURE CLARIFIED. ***AUDITORY TRAINING DEVICES*** 39FCC2D0983

AUTHORITY DELEGATION OF

SEC. 0.311 AMENDED TO EXPAND AUTHORITY DELEGATED TO CHIEF FIELD ENGINEERING BUREAU. ***COMMERCIAL OPERATOR PERMITS*** 39FCC2D0998

AVIATION SERVICES

PETITION FOR RECONSIDERATION OF ORDER INVOLVING PROCESSING AND PUBLIC NOTICE PRECEDURES FOR AVIATION SERVICE APPLICATIONS GRANTED AND AMENDMENT OF SEC. 1.962(E), CONCERNING NOTICE WHERE APPLICATION IS RETURNED FOR CORRECTION, ADOPTED. ***APPLICATIONS - SAFETY AND SPECIAL*** 39FCC2D0124

BUSINESS RADIO SERVICE

APPLICATIONS FOR OPERATIONAL FIXED STATIONS FACILITIES IN THE BUSINESS RADIO SERVICE GRANTED IN PART TO ALLOW PRESENTATION OF FEATURE FILM AND DENIED FOR THIRD-PARTY ADVERTISERS OR CONVENTION NEWS SINCE THIS REPRESENTS A PURPOSE INCONSISTENT WITH THE PURPOSES FOR WHICH THE SERVICE WAS ESTABLISHED. ***COLUMBIA PICTURES INDUSTRIES, INC.*** 39FCC2D0411

NOTICE OF INQUIRY AND PROPOSED RULE MAKING FOR TRANSMISSION BY WIRE OR RADIO CLOSED CIRCUIT IN THE BUSINESS RADIO SERVICE, OR THE MULTIPOINT DISTRIBUTION SERVICE OF MOTION PICTURES TO HOTEL MASTER ANTENNA SYSTEMS SHOULD BE RESTRICTED TO LIMIT THE COMPETITIVE EFFECT UPON TELEVISION OR CABLE SERVICES, AND POTENTIAL SIPHONING OF PROGRAM MATERIAL. ***TRANSMITTING PROG MATERIAL TO HOTELS*** 39FCC2D0527

CABLE TELEVISION RELAY SERVICE

APPLICATION FOR WAIVER OF RULE 78.1 TO ALLOW RELAY OF FEATURE FILMS AND SPORTING EVENTS OVER A ONE CHANNEL, THREE HOP MICROWAVE COMMUNICATION

FACILITY IN THE CABLE TELEVISION RELAY SERVICE TO UNAFFILIATED CABLE TELEVISION SYSTEMS GRANTED. ***STERLING COMMMUNICATIONS, INC.*** 39FCC2D0101

APPLICATIONS FOR PERMITS IN THE CABLE TELEVISION RELAY SERVICE TO ALLOW A CABLE SYSTEM TO UTILIZE ITS OWN FACILITIES RATHER THAN THOSE OF A MICROWAVE COMMON CARRIER GRANTED SINCE ALLEGATIONS OF MISCONDUCT DO NOT PERTAIN TO THE APPLICANT AND THE SIGNALS INVOLVED WERE BEING CARRIED ON A SWITCHED BASIS PRIOR TO MARCH 31, 1972. ***SATELLITE SYSTEMS CORP.*** 39FCC2D0614

CALL LETTERS

APPLICATION FOR REVIEW OF STAFF ACTION GRANTING CHANGE IN CALL SIGN GRANTED SINCE NEW CALL LETTERS WOULD CONFUSE THE IDENTITY OF THE US STATION WITH A CUBAN STATION WHOSE SIGNALS ARE RECEIVED IN THE SAME AREA. ***RADIO WLTO, INC.*** 39FCC2D0806

CANTAT-11

JOINT APPLICATION REQUESTING MODIFICATION OF CANTAT-11 ORDERGRANTING CONSTRUCTION AND OPERATION OF TAT-6 AND SUBMARINE CABLE BETWEEN U.S. AND FRANCE AND SUBMARINE CABLE BETWEEN CANADA AND UNITED KINGDOM (35FCC2D801) GRANTED IN PART AND DENIED IN PART. ***AMER. TEL. & TEL. CO.*** 39FCC2D0865

CARRIER CONNECTING

MOTION FOR CLARIFICATION OF EXCEPTION TO REVIEW BOARD DECISION 38FCC2D803 AFFIRMING INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE GRANTED TO THE EXTENT THAT THE GENERAL TELEPHONE COS. OF CALIFORNIA, FLORIDA AND WISCONSIN ARE HELD TO BE CONNECTING CARRIERS. ***U.S. DEPARTMENT OF DEFENSE*** 39FCC2D0843

CATV

PETITION FOR SPECIAL RELIEF REQUESTING CORRECTION OF INADVERTANT OPERATION WITHOUT AUTHORIZATION GRANTED SINCE TO DENY WOULD DEPRIVE SUBSCRIBERS TO PROGRAMMING TO WHICH THEY ARE ACCUMSTOMED WITHOUT GOOD REASON. ***LAFOURCHE COMM., INC.*** 39FCC2D0472

CATV ACCESS

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND THE ADDITION OF CHANNELS GRANTED SINCE THE SYSTEM IS GRANDFATHERED UNDER THE RULES, HOWEVER, BOTH PUBLIC ACCESS AND EDUCATIONAL ACCESS CHANNELS MUST BE PROVIDED AND THE EDUCATIONAL CHANNEL MUST BE SPECIFICALLY DESIGNATED FOR USE BY THE LOCAL EDUCATIONAL AUTHORITIES, PURSUANT TO SEC. 76.251(A). ***METRO CABLE CO.*** 39FCC2D0169

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND WAIVER OFSEC. 76.251 SEPARATE ACCESS CHANNELS AND SEC. 76.91 PROGRAM EXCLUSIVITY REQUIREMENTS GRANTED BUT ONLY PARTIAL WAIVERS APPROVED TO BE REMOVED AFTER 500 SUBSCRIBERS ARE OBTAINED. ***STARK COUNTY COMM., INC.*** 39FCC2D0274

APPLICATION FOR CATV CERTIFICATES OF COMPLIANCE GRANTED SINCE GRANDFATHER RIGHTS DO NOT EXTEND TO STATION PREVIOUSLY CARRIED AND HEAD-END FOR FOUR SYSTEMS REQUIRE ONLY COMMON ACCESS FOR THE SYSTEMS UNLESS DEMAND DEVELOPS FOR MORE ACCESS CHANNELS. ***SAGINAW CABLE TV CO.*** 39FCC2D0496

CATV ADDITIONAL CHANNELS

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCEDELETION OF STATION PROPOSED TO BE CARRIED MOOTS ONLY OBJECTION SEC. 76.17 . ***GENERAL ELECTRIC CABLEVISION CORP.*** 39FCC2D0158

APPLICATION FOR CERTIFICATE OF COMPLIANCE TO ADD ON INDEPENDENT CANDIAN SIGNAL TO A CABLE TELEVISION SYSTEM PURSUANT TO SEC. 76.59 DENIED, SINCE THE STATION PROPOSED IS NOT INDEPENDENT AS DEFINE BY 76.5(N) IN THAT IT CARRIES OVER 10 HOURS OF MAJOR NETWORK PROGRAMMING DURING PRIME TIME. ***KING VIDEOCABLE CO.*** 39FCC2D0600

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE TO CARRY A FOREIGN SIGNAL GRANTED SINCE THE OBJECTING STATION IS NOT LOCAL AND HAS NO RIGHT TO CARRIAGE, AND IMPORTATION OF FOREIGN LANGAUGE PROGRAMMING IS IN THE PUBLIC INTEREST. ***MICKELSON MEDIA, INC.*** 39FCC2D0602

APPLICATION FOR CERTIFICATE OF COMPLIANCE AND FOR WAIVER OF SEC. 76.61(B)(2), REQUIRING THAT THE FIRST TWO DISTANT INDEPENDENT SIGNALS CARRIED BY A CABLE SYSTEM MUST BE SELECTED FROM THE CLOSEST TWO OF THE TOP 25 TELEVISION MARKETS, GRANTED TO ALLOW ADDITIONAL CHANNELS SINCE THE DISTANT HERE IS SMALL. ***WESTERN TV CABLE CORP.*** 39FCC2D0624

CATV CARRIAGE OF ETV STATION PROGRAMMING

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND THE ADDITION OF CHANNELS GRANTED SINCE THE SYSTEM IS GRANDFATHERED UNDER THE RULES, HOWEVER, BOTH PUBLIC ACCESS AND EDUCATIONAL ACCESS CHANNELS MUST BE PROVIDED AND THE EDUCATIONAL CHANNEL MUST BE SPECIFICALLY DESIGNATED FOR USE BY THE LOCAL EDUCATIONAL AUTHORITIES, PURSUANT TO SEC. 76.251(A). ***METRO CABLE CO.*** 39FCC2D0169

CATV CARRIAGE OF TV SIGNALS SPECIFIED ZONE

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED FOR ASHORT TERM, SUBJECT TO A SELECTION OF WHICH INDEPENDENT STATION IT WILL CARRY, SINCE IT IS NOT CLEAR WHETHER THE FRANCHISING AUTHORITY HAS CONTROL OVER SUBSCRIBER RATES. REQUESTED WAIVER OF 76.61(B)(2) TO ALLOW CARRIAGE OF 4 RATHER THAN 3 INDEPENDENT SIGNALS DENIED. ***SARATOGA CABLE TV CO., INC.*** 39FCC2D0611

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCETHERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31, THE EARLIER FRANCHISE AGREEMENT WAS PUBLISHED AND A HEARING HELD, AND THE SYSTEM WILL NOT BE LOCATED WITHIN THE 35 MILE SPECIFIED ZONE OF ANY COMMERCIAL TV STATION PURSUANT TO SEC. 76.5. ***SENTINEL COMM. OF MUNCIE, INC.*** 39FCC2D0620

CATV CARRIAGE OF TV SIGNALS SPECIFIED ZONES

APPLICATION FOR CATV CERTIFICATES OF COMPLIANCE GRANTED SINCE THERE IS SUBSTANTIAL COMPLIANCE WITH SEC. 76.31 AND CARRIAGE OF DISTANT IN-STATE EDUCATIONAL SIGNALS IS NOT PROHIBITED SINCE A SPHERE OF INFLUENCE IS NOT RECOGNIZED FOR LOCAL EDUCATIONAL STATION. ***ORANGE CABLEVISION, INC.*** 39FCC2D0071

CATV CARRIAGE OF TV SIGNALS SPECIFIED ZONES

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE, WHICH REQUESTED WAIVER OF FORMER SEC. 74.1107(A) TO CARRY DISTANT IN-STATE EDUCATIONAL SIGNAL, WAS UNOPPOSED BY LOCAL EDUCATIONAL STATION AT THE TIME, AND THE SIGNALS ARE NOW GRANDFATHERED. ***ORANGE CABLEVISION, INC.*** 39FCC2D0073

CATV CARRIAGE OF UHF SIGNAL

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED PROVIDED CHANNELS CARRIED ARE CONSISTENT WITH SECTION 76.61 (B)(2) REQUIRING THAT THE TWO CLOSET MARKETS IN THE FIRST 25 MAJOR MARKETS AND ONE INDEPENDENT UHF STATION WITHIN 200 AIR MILES. ARE CARRIED. ***CAPITOL DISTRICT BETTER T.V., INC.*** 39FCC2D0013

CATV CARRIAGE REQUIREMENTS

PETITION FOR RECONSIDERATION OF RESTRICTIVE CONDITIONS IN GRANT OF AUTHORITY TO SUPPLEMENT EXISTING INTERSTATE AND FOREIGN SPECIALIZED COMMUNICATIONS SERVICES GRANTED, AND CONDITIONS DELETED, SINCE THEY NO LONGER APPEAR NECESSARY IN LIGHT OF MORE RECENT POLICY DETERMINATIONS AND RULE CHANGES IN THE CATV FIELD. ***COMMUNICATIONS INTERSTATE OR FOREIGN*** 39FCC2D0131

CATV CARRIER AGREEMENTS

PETITION FOR PARTIAL RECONSIDERATION OF ORDER FOR FORFEITUREFOR VIOLATION OF SECTION 203(C) (35 FCC 2D 707) DENIED, SINCE A CARRIER MAY NOT COLLECT ANY PAYMENT THAT IS NOT SPECIFIED IN THE TARIFF SCHEDULE THEN IN EFFECT. ***CRUCES CABLE CO., INC.*** 39FCC2D0552

CATV CERTIFICATE OF COMPLIANCE

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED PROVIDED CHANNELS CARRIED ARE CONSISTENT WITH SECTION 76.61 (B)(2) REQUIRING THAT THE TWO CLOSET MARKETS IN THE FIRST 25 MAJOR MARKETS AND ONE INDEPENDENT UHF STATION WITHIN 200 AIR MILES. ARE CARRIED. ***CAPITOL DISTRICT BETTER T.V., INC.*** 39FCC2D0013

APPLICATION FOR CERTIFICATE OF COMPLIANCE FOR A NEW CABLE TELEVISION SYSTEM GRANTED SINCE THERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH SECTION 76.31 REQUIRING SIGNIFICANT CONSTRUCTION OF STATION WITHIN ONE YEAR. ***LIBERTY COMMUNICATIONS, INC.*** 39FCC2D0050

APPLICATION FOR CATV CERTIFICATES OF COMPLIANCE GRANTED SINCE THERE IS SUBSTANTIAL COMPLIANCE WITH SEC. 76.31 AND CARRIAGE OF DISTANT IN-STATE EDUCATIONAL SIGNALS IS NOT PROHIBITED SINCE A SPHERE OF INFLUENCE IS NOT RECOGNIZED FOR LOCAL EDUCATIONAL STATION. ***ORANGE CABLEVISION, INC.*** 39FCC2D0071

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE, WHICH REQUESTED WAIVER OF FORMER SEC. 74.1107(A) TO CARRY DISTANT IN-STATE EDUCATIONAL SIGNAL, WAS UNOPPOSED BY LOCAL EDUCATIONAL STATION AT THE TIME, AND THE SIGNALS ARE NOW GRANDFATHERED. ***ORANGE CABLEVISION, INC.*** 39FCC2D0073

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCECARRIAGE OF THE DISTANT IN-STATE EDUCATIONAL SIGNALS WAS EARLIER AUTHORIZED AND HENCE GRANDFATHERED UNDER COMMISSION RULES. ***ORANGE CABLEVISION, INC*** 39FCC2D0075

APPLICATIONS FOR CATV CERTIFICATE OF COMPLIANCE SEC. 76.31 GRANTED SINCE THE PUBLIC INTEREST DOES NOT REQUIRE A SPHERE OF INFLUENCE TO PREVENT IMPORTATION OF IN-STATE EDUCATIONAL STATIONS AND OBJECTIONS WERE UNTIMELY RAISED. ***SEMINOLE CABLEVISION, INC.*** 39FCC2D0096

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE SEC. 76.31 GRANTED SINCE THE PUBLIC INTEREST DOES NOT REQUIRE A SPHERE OF INFLUENCE TO PREVENT IMPORTATION OF IN-STATE EDUCATIONAL STATIONS AND THE OBJECTIONS WERE NOT TIMELY RAISED. ***SEMINOLE CABLEVISION, INC.*** 39FCC2D0098

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND FOR PARTIAL WAIVER OF SEC. 76.31 GRANTED, SINCE THERE IS NO APPROPRIATE FRANCHISING AUTHORITY BUT GRANT OF RIGHT OF WAY IS ACCEPTABLE ALTERNATE PROPOSAL, NO AFFIRMATIVE ALLEGATIONS OF SHOTCOMINGS BY APPLICANT WERE ALLEGED IN OPPOSITION, AND THERE HAS BEEN SUBSTANTIAL COMPLIANCE (SEC. 76.7). ***SUN VALLEY CABLE COMM.*** 39FCC2D0105

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCETHERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH SECTION 76.31. ***TRI-CITIES CABLE CO., INC.*** 39FCC2D0108

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCETHERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH SECTION 76.31. ***TRI-CITIES CABLE CO., INC.*** 39FCC2D0110

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCETHE EVENTUAL NEED TO COMPLY WITH THE CROSS-OWNERSHIP RULES, SECTION 76.501(A), IS NOT SUFFICIENT REASON TO DELAY SYSTEM OPERATION. ***VALLEY CABLEVISION CORP.*** 39FCC2D0113

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED, SINCE THE AMENDED APPLICATION MEETS ALL OBJECTIONS RAISED CONCERNING COMPLIANCE WITH 76.13(A)(4), (A)(8) AND 76.251 REGARDING ACCESS CHANNELS AND EQUAL EMPLOYMENT OPPORTUNITIES. ***GENERAL ELECTRIC CABLEVISION CORP.*** 39FCC2D0156

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND THE ADDITION OF CHANNELS GRANTED SINCE THE SYSTEM IS GRANDFATHERED UNDER THE RULES, HOWEVER, BOTH PUBLIC ACCESS AND EDUCATIONAL ACCESS CHANNELS MUST BE PROVIDED AND THE EDUCATIONAL CHANNEL MUST BE SPECIFICALLY DESIGNATED FOR USE BY THE LOCAL EDUCATIONAL AUTHORITIES, PURSUANT TO SEC. 76.251(A). ***METRO CABLE CO.*** 39FCC2D0169

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND WAIVER OFSEC. 76.251 SEPARATE ACCESS CHANNELS AND SEC. 76.91 PROGRAM EXCLUSIVITY REQUIREMENTS GRANTED BUT ONLY PARTIAL WAIVERS APPROVED TO BE REMOVED AFTER 500 SUBSCRIBERS ARE OBTAINED. ***STARK COUNTY COMM., INC.*** 39FCC2D0274

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND PETITION FOR SPECIAL RELIEF GRANTED TO ALLOW WAIVER OF SEC. 76.5 AND CONSIDERATION OF PROPOSED SERVICE AREA AS WHOLLY OUTSIDE ALL MAJOR AND SMALLER TELEVISION MARKETS. ***VILLAGE CATV, INC.*** 39FCC2D0288

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCEDELETION OF STATION PROPOSED TO BE CARRIED MOOTS ONLY OBJECTION SEC. 76.17 . ***GENERAL ELECTRIC CABLEVISION CORP.*** 39FCC2D0158

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCEIN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31 REQUIREMENTS. ***TRI-CITIES CABLE CO., INC.*** 39FCC2D0286

APPLICATION FOR WAIVER OF PROGRAM EXCLUSIVITY RULE, 76.91, CONCERNING CABLE TELEVISION SERVICE IS ALLOWED AND CERTIFICATE OF COMPLIANCE GRANTED DUE TO THE SMALL SYSTEM INVOLVED AND UNTIL 500 SUBSCRIBERS ARE OBTAINED. ***PARSEN ELECTRIC CO.*** 39FCC2D0491

APPLICATION FOR CERTIFICATE OF COMPLIANCE AND FOR PARTIAL WAIVER OF SEC. 76.251 SEPARATE ACCESS CHANNELS IN EACH COMMUNITY GRANTED AND CERTIFICATES OF COMPLIANCE APPROVED SINCE SMALL SYSTEMS LOCATED IN MAJOR MARKETS WILL BE SPARED THE EXPENSE OF FULL COMPLIANCE FOR SMALL COMMUNITIES. ***REGIONAL CABLE CORPORATION*** 39FCC2D0494

APPLICATION FOR CATV CERTIFICATES OF COMPLIANCE GRANTED SINCE GRANDFATHER RIGHTS DO NOT EXTEND TO STATION PREVIOUSLY CARRIED AND HEAD-END FOR FOUR SYSTEMS REQUIRE ONLY COMMON ACCESS FOR THE SYSTEMS UNLESS DEMAND DEVELOPS FOR MORE ACCESS CHANNELS. ***SAGINAW CABLE TV CO.*** 39FCC2D0496

FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCE SUBSTANTIALCOMPLIANCE HAS BEEN MADE IN AMENDED APPLICATION, WHICH PROVIDES FOR A LOCAL OFFICE AND FOR MAINTENANCE OF A COMPLAINT LOG. SEC. 76.31 . ***CABLE TELESYSTEMS OF N.J.*** 39FCC2D0547

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE IS GRANTED SINCE PROPER NOTICE OF PROPOSAL TO ADD CHANNELS WAS SERVED UNDER FORMER SECTION 74.1105 AND NO OBJECTIONS WERE RAISED AND THUS THE PROPOSED SIGNALS BECAME AUTHORIZED, EVEN THOUGH NOT YET IN OPERATION, AND GRANDFATHERED UNDER SECTION 76.65. ***FORT SMITH TV CABLE CO.*** 39FCC2D0573

APPLICATION FOR CERTIFICATE OF COMPLIANCE TO ADD ON INDEPENDENT CANDIAN SIGNAL TO A CABLE TELEVISION SYSTEM PURSUANT TO SEC. 76.59 DENIED, SINCE THE STATION PROPOSED IS NOT INDEPENDENT AS DEFINE BY 76.5(N) IN THAT IT CARRIES OVER 10 HOURS OF MAJOR NETWORK PROGRAMMING DURING PRIME TIME. ***KING VIDEOCABLE CO.*** 39FCC2D0600

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE TO CARRY A FOREIGN SIGNAL GRANTED SINCE THE OBJECTING STATION IS NOT LOCAL AND HAS NO RIGHT TO CARRIAGE, AND IMPORTATION OF FOREIGN LANGAUGE PROGRAMMING IS IN THE PUBLIC INTEREST. ***MICKELSON MEDIA, INC.*** 39FCC2D0602

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCEIN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31. ***MORGAN COUNTY TELE-CABLE, INC.*** 39FCC2D0605

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED FOR ASHORT TERM, SUBJECT TO A SELECTION OF WHICH INDEPENDENT STATION IT WILL CARRY, SINCE IT IS NOT CLEAR WHETHER THE FRANCHISING AUTHORITY HAS CONTROL OVER SUBSCRIBER RATES. REQUESTED WAIVER OF 76.61(B)(2) TO ALLOW CARRIAGE OF 4 RATHER THAN 3 INDEPENDENT SIGNALS DENIED. ***SARATOGA CABLE TV CO., INC.*** 39FCC2D0611

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCETHERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31, THE EARLIER FRANCHISE AGREEMENT WAS PUBLISHED AND A HEARING HELD, AND THE SYSTEM WILL NOT BE LOCATED WITHIN THE 35 MILE SPECIFIED ZONE OF ANY COMMERCIAL TV STATION PURSUANT TO SEC. 76.5. ***SENTINEL COMM. OF MUNCIE, INC.*** 39FCC2D0620

APPLICATION FOR CERTIFICATE OF COMPLIANCE AND FOR WAIVER OF SEC. 76.61(B)(2), REQUIRING THAT THE FIRST TWO DISTANT INDEPENDENT SIGNALS CARRIED BY A CABLE SYSTEM MUST BE SELECTED FROM THE CLOSEST TWO OF THE TOP 25 TELEVISION MARKETS, GRANTED TO ALLOW ADDITIONAL CHANNELS SINCE THE DISTANT HERE IS SMALL. ***WESTERN TV CABLE CORP.*** 39FCC2D0624

APPLICATION FOR CERTIFICATE OF COMPLIANCE TO OPERATE A CABLETELEVISION SYSTEM FOR CERTAIN UNINCORPORATED AREAS OF SAN JOACHIM VALLEY, CAL., GRANTED SINCE IN SUBSTANTIAL COMPLIANCE WITH REQUIREMENTS OF SEC. 76.31. ***BIG VALLEY CABLEVISION, INC.*** 39FCC2D0642

APPLICATION FOR CERTIFICATE OF COMPLIANCE FOR NEW CABLE TELEVISION SYSTEMS AT CERES AND STANISLAUS COUNTY, CAL. GRANTED SINCE IN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31. ***CERIS CABLE CO., INC.*** 39FCC2D0686

APPLICATION FOR CERTIFICATE OF COMPLIANCE TO NEW CATV SYSTEMGRANTED SINCE IN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31. ***LVO CABLE, INC.*** 39FCC2D0784

APPLICATION FOR 3 CERTIFICATES OF COMPLIANCE SEC. 76.31 FOR NEW 20 CHANNEL CABLE TV SYSTEMS TO OPERATE FROM WENONA, MINOK AND TOLUCA, ILL., GRANTED. ***TRI-COUNTY CABLE TV C., INC.*** 39FCC2D0833

APPLICATIONS FOR CERTIFICATE OF COMPLIANCE FOR CARRIAGE OF GRANDFATHERED SIGNALS TO PRESENT CABLE TV SYSTEMS GRANTED, SINCE THE BURDEN OF A CLEAR SHOWING HAS NOT BEEN MET BY OPPOSITION. ***ORANGE CABLEVISION, INC.*** 39FCC2D0943

APPLICATION FOR CERTIFICATE OF COMPLIANCE TO OFFER CABLE TV SERVICE TO A SMALL COMMUNITY GRANTED, SINCE ALLEGATIONS OF INVALID FRANCHISE ARE UNSUBSTANTIATED. (SEC. 76.31). ***FLAGLER CABLE CO., INC.*** 39FCC2D0930

APPLICATION FOR CERTIFICATE OF COMPLIANCE TO BEGIN CABLE TV SERVICE GRANTED, SINCE COMPLIANCE WITH FORMER SEC. 74.1105 (A) (TIME FOR FILING) RUNS FROM THE DATE NOTICE WAS FILED. WITH THE COMMISSION, THUS ESTABLISHING A GRANDFATHERED AUTHORIZATION. ***GREATER LAWRENCE COMM. ANTENNA, INC.*** 39FCC2D0935

APPLICATION FOR CERTIFICATE OF COMPLIANCE FOR CABLE TV SYSTEM TO OPERATE IN OHIO GRANTED, SINCE THE AREA INVOLVED DOES NOT ISSUE FRANCHISES OR OTHER JURISDICTIONAL AUTHORIZATION. ***MAHONING VALLEY CABLEVISION, INC.*** 39FCC2D0939

CATV CROSS OWNERSHIP

PETITION FOR RECONSIDERATION OF SECOND REPORT AND ORDER IN DOCKET NO. 18397, 23 FCC2D816 , ADOPTING SEC. 76.501 REGARDING DIVESTITURE REQUIREMENTS FOR CABLE TELEVISION CROSS-OWNERSHIP, DENIED EXCEPT TO EXTEND THE GRACE PERIOD TO AUGUST 10, 1975, AND TO ENCOURAGE THE FILING OF WAIVER PETITIONS. ***CABLE TELEVISION CROSS-OWNERSHIP*** 39FCC2D0377

CATV EXTENSION OF DISTANT SIGNALS, LEAPFROGGING

APPLICATION FOR CERTIFICATE OF COMPLIANCE AND FOR WAIVER OF SEC. 76.61(B)(2), REQUIRING THAT THE FIRST TWO DISTANT INDEPENDENT SIGNALS CARRIED BY A CABLE SYSTEM MUST BE SELECTED FROM THE CLOSEST TWO OF THE TOP 25 TELEVISION MARKETS, GRANTED TO ALLOW ADDITIONAL CHANNELS SINCE THE DISTANT HERE IS SMALL. ***WESTERN TV CABLE CORP.*** 39FCC2D0624

CATV FRANCHISE, ACCEPTABLE ALTERNATE PROPOSA

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND FOR PARTIAL WAIVER OF SEC. 76.31 GRANTED, SINCE THERE IS NO APPROPRIATE FRANCHISING AUTHORITY BUT GRANT OF RIGHT OF WAY IS ACCEPTABLE ALTERNATE PROPOSAL, NO AFFIRMATIVE ALLEGATIONS OF SHOTCOMINGS BY APPLICANT WERE ALLEGED IN OPPOSITION, AND THERE HAS BEEN SUBSTANTIAL COMPLIANCE (SEC. 76.7). ***SUN VALLEY CABLE COMM.*** 39FCC2D0105

CATV GRANDFATHERING RIGHTS

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCECARRIAGE OF THE DISTANT IN-STATE EDUCATIONAL SIGNALS WAS EARLIER AUTHORIZED AND HENCE GRANDFATHERED UNDER COMMISSION RULES. ***ORANGE CABLEVISION, INC*** 39FCC2D0075

APPLICATION FOR CATV CERTIFICATES OF COMPLIANCE GRANTED SINCE GRANDFATHER RIGHTS DO NOT EXTEND TO STATION PREVIOUSLY CARRIED AND HEAD-END FOR FOUR SYSTEMS REQUIRE ONLY COMMON ACCESS FOR THE SYSTEMS UNLESS DEMAND DEVELOPS FOR MORE ACCESS CHANNELS. ***SAGINAW CABLE TV CO.*** 39FCC2D0496

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE IS GRANTED SINCE PROPER NOTICE OF PROPOSAL TO ADD CHANNELS WAS SERVED UNDER FORMER SECTION 74.1105 AND NO OBJECTIONS WERE RAISED AND THUS THE PROPOSED SIGNALS BECAME AUTHORIZED, EVEN THOUGH NOT YET IN OPERATION, AND GRANDFATHERED UNDER SECTION 76.65. ***FORT SMITH TV CABLE CO.*** 39FCC2D0573

APPLICATION FOR CERTIFICATE OF COMPLIANCE TO BEGIN CABLE TV SERVICE GRANTED, SINCE COMPLIANCE WITH FORMER SEC. 74.1105 (A) (TIME FOR FILING) RUNS FROM THE DATE NOTICE WAS FILED. WITH THE COMMISSION, THUS ESTABLISHING A GRANDFATHERED AUTHORIZATION. ***GREATER LAWRENCE COMM. ANTENNA, INC.*** 39FCC2D0935

CATV MICROWAVE CARRIAGE

APPLICATION FOR NEW STATION AND MODIFICATION OF EXISTING STATION IN THE DOMESTIC PUBLIC POINT-TO-POINT MICROWAVE RADIO SERVICE, TO RELAY DISTANT SIGNAL, GRANTED SINCE IN COMPLIANCE WITH DISTANT SIGNAL CARRIAGE RULES AND THERE IS PRESENTLY NO CROSS OWNERSHIP RESTRICTION CONCERNING MASS MEDIA OWNERS AND COMMON CARRIERS. ***EASTERN MICROWAVE, INC.*** 39FCC2D0414

PETITION FOR RECONSIDERATION OF THE LAWFULNESS OF TARIFF RATES CHARGED (35 FCC 2D 907) IS DENIED, SINCE NO NEW FACTS ARE PRESENTED AND AN INVESTIGATION AND HEARING HAVE BEEN ORDERED. ***CRUCES CABLE CO., INC.*** 39FCC2D0554

CATV NOTIFICATION OF INTENT TO COMMENCE OPERATION

EXCEPTIONS TO INITIAL DECISION ISSUING CEASE AND DESIST ORDER FOR VIOLATION OF SEC. 74.1105(A) (CARRYING TV SIGNALS WITHOUT PROPER NOTICE) DENIED SINCE, UNTIL A CABLE TELEVISION SYSTEM COMPLIED WITH THIS RULE, THE MERITS OF ITS SERVICE WILL NOT BE CONSIDERED. ***TELE-CEPTION OF WINCHESTER, INC.*** 39FCC2D0280

CATV PROGRAM EXCLUSIVITY

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND WAIVER OFSEC. 76.251 SEPARATE ACCESS CHANNELS AND SEC. 76.91 PROGRAM EXCLUSIVITY REQUIREMENTS GRANTED BUT ONLY PARTIAL WAIVERS APPROVED TO BE REMOVED AFTER 500 SUBSCRIBERS ARE OBTAINED. ***STARK COUNTY COMM., INC.*** 39FCC2D0274

APPLICATION FOR WAIVER OF PROGRAM EXCLUSIVITY RULE, 76.91, CONCERNING CABLE TELEVISION SERVICE IS ALLOWED AND CERTIFICATE OF COMPLIANCE GRANTED DUE TO THE SMALL SYSTEM INVOLVED AND UNTIL 500 SUBSCRIBERS ARE OBTAINED. ***PARSEN ELECTRIC CO.*** 39FCC2D0491

CATV PROGRAM EXCLUSIVITY, SIMULTANEOUS

PETITION BY CATV SYSTEM FOR SPECIAL RELIEF SEEKING WAIVER OFSEC. 76.93 TO ALLOW FOR SIMULTANEOUS ONLY EXCLUSIVITY RATHER THAN SAME DAY EXCLUSIVITY DENIED SINCE SUCH CHANGE WOULD RESULT IN A 55(LOSS OF PRIME TIME HOURS. ***MAGIC VALLEY CABLE VISION, INC.*** 39FCC2D0166

CATV REPORTS REQUIRED BY COMMISSION

SECTION 76.13(B)(2) SHALL BE APPLIED RETROACTIVELY TO MARCH 31, 1972, CONCERNING AMENDMENT REQUIREMENTS FOR PENDING CABLE TELEVISION APPLICATIONS AND PLEADINGS. ***AMENDMENT REQUIREMENTS, RE CABLE TV*** 39FCC2D0001

CATV REQUEST FOR WAIVER OF DISTANT SIGNAL RULE

APPLICATIONS FOR PERMITS IN THE CABLE TELEVISION RELAY SERVICE TO ALLOW A CABLE SYSTEM TO UTILIZE ITS OWN FACILITIES RATHER THAN THOSE OF A MICROWAVE COMMON CARRIER GRANTED SINCE ALLEGATIONS OF MISCONDUCT DO NOT PERTAIN TO THE APPLICANT AND THE SIGNALS INVOLVED WERE BEING CARRIED ON A SWITCHED BASIS PRIOR TO MARCH 31, 1972. ***SATELLITE SYSTEMS CORP.*** 39FCC2D0614

CATV SERVICE BY POINT-TO-POINT MICROWAVE RELAY

APPLICATION FOR WAIVER OF RULE 78.1 TO ALLOW RELAY OF FEATURE FILMS AND SPORTING EVENTS OVER A ONE CHANNEL, THREE HOP MICROWAVE COMMUNICATION FACILITY IN THE CABLE TELEVISION RELAY SERVICE TO UNAFFILIATED CABLE TELEVISION SYSTEMS GRANTED. ***STERLING COMMMUNICATIONS, INC.*** 39FCC2D0101

CATV SUBSCRIBERS

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND WAIVER OFSEC. 76.251 SEPARATE ACCESS CHANNELS AND SEC. 76.91 PROGRAM EXCLUSIVITY REQUIREMENTS GRANTED BUT ONLY PARTIAL WAIVERS APPROVED TO BE REMOVED AFTER 500 SUBSCRIBERS ARE OBTAINED. ***STARK COUNTY COMM., INC.*** 39FCC2D0274

CATV TARRIFFS

JOINT PETITION FOR ENLARGEMENT OF ISSUES TO INCLUDE AN ISSUEOF WHETHER PROPOSEF TARIFF RATE CHANGES ARE CONSISTENT WITH PRICE COMMISSION GUIDELINES DENIED, SINCE THE ISSUES AS ORIGINALLY STARTED WILL COVER THIS AND THE MOTION WAS PRECEDURALLY DEFICIENT, LACKING AFFIDAVIT (SEC. 1.229(C)). ***AMERICAN TELEVISION RELAY, INC.*** 39FCC2D0545

CATV, CARRIAGE OF LIVE SPORTS EVENTS

INTERPRETIVE RULING THAT UNDER SECTION 76.59 (D)(2) CABLE SYSTEMS MAY NOT IMPORT A DISTANT NETWORK TELEVISION STATION NOT NORMALLY CARRIED ON THE SYSTEM, BROADCASTING A BLACKED OUT SPORTS PROGRAM. ***SCRIPPS-HOWARD B/CING CO.*** 39FCC2D0502

CEASE AND DESIST ORDER

EXCEPTIONS TO INITIAL DECISION ISSUING CEASE AND DESIST ORDER FOR VIOLATION OF SEC. 74.1105(A) (CARRYING TV SIGNALS WITHOUT PROPER NOTICE) DENIED SINCE, UNTIL A CABLE TELEVISION SYSTEM COMPLIED WITH THIS RULE, THE MERITS OF ITS SERVICE WILL NOT BE CONSIDERED. ***TELE-CEPTION OF WINCHESTER, INC.*** 39FCC2D0280

CHARACTER QUALIFICATIONS

APPEAL FROM ADMINISTRATIVE JUDGES ORDER GRANTING APPLICATIONFOR REIMBURSEMENT, GRANTED AND ORDER FCC 72M-1595 IS SET ASIDE PENDING RESOLUTION OF OUTSTANDING CHARACTER ISSUE AGAINST APPLICANT. ***ST. CROSS B/CING, INC.*** 39FCC2D0512

CHILDREN PROGRAMS

FAIRNESS DOCTRINE COMPLAINT AGAINST TELEVISION INFORMATION OFFICE SPOT ANNOUNCEMENT RE BENEFITS OF CHILDRENS TV DENIED SINCE COMPLAINANT FAILED TO RAISE EXAMPLES OF LICENSEES FAILURE TO COMPLY WITH FAIRNESS DOCTRINE. ***ACTION FOR CHILDRENS TV, INC.*** 39FCC2D0702

CLASS 4 POWER INCREASE POLICY

APPLICATION TO MODIFY CLASS IV LICENSE BY DISMANTLING ONE OFTWO TOWERS AND OPERATING NON-DIRECTIONALLY DURING DAYTIME DENIED, SINCE BENEFITS OF PRESENT DIRECTIONAL DAYTIME OPERATION OUTWEIGH OTHER CONSIDERATIONS AND APPLICANT FAILED TO MEET THE PREPONDERANT NEED TEST. ***OLYMPIAN B/CING CORP.*** 39FCC2D0787

CLASS I TV DEVICES

PETITION FOR RECONSIDERATION REQUESTING EXTENSION OF WAIVERSOF SECS. 2.805 AND 15.7 PERMITTING MARKETING OF CLASS I TV DEVICES AND SEC. 15.407 REQUIRING SAID DEVICES TO BE EQUIPPED WITH A RECEIVER TRANSFER SWITCH HAVING A 60 DB ISOLATION, GRANTED SINCE TIMETABLES PRESENTED INDICATE UNDUE HARDSHIP WOULD RESULT TO MANUFACTURERS WITHOUT EXTENSION OF WAIVERS. ***CLASS I TV DEVICE*** 39FCC2D0689

CLOSED CIRCUIT

NOTICE OF INQUIRY AND PROPOSED RULE MAKING FOR TRANSMISSION BY WIRE OR RADIO CLOSED CIRCUIT IN THE BUSINESS RADIO SERVICE, OR THE MULTIPOINT DISTRIBUTION SERVICE OF MOTION PICTURES TO HOTEL MASTER ANTENNA SYSTEMS SHOULD BE RESTRICTED TO LIMIT THE COMPETITIVE EFFECT UPON TELEVISION OR CABLE SERVICES, AND POTENTIAL SIPHONING OF PROGRAM MATERIAL. ***TRANSMITTING PROG MATERIAL TO HOTELS*** 39FCC2D0527

COMMERCIAL PRACTICES

PUBLIC NOTICE ISSUED AS A REMINDER THAT PROGRAM LENGTH COMMERCIALS INTERWOVEN WITH COMMERCIAL MESSAGES ARE A SERIOUS DERELICTION BY THE LICENSEE AND THAT IN THE FUTURE THE FCC WILL IMPOSE SANCTIONS. ***PROGRAM LENGTH COMMERCIALS*** 39FCC2D1062

COMMERCIALS HIDDEN

PUBLIC NOTICE ISSUED AS A REMINDER THAT PROGRAM LENGTH COMMERCIALS INTERWOVEN WITH COMMERCIAL MESSAGES ARE A SERIOUS DERELICTION BY THE LICENSEE AND THAT IN THE FUTURE THE FCC WILL IMPOSE SANCTIONS. ***PROGRAM LENGTH COMMERCIALS*** 39FCC2D1062

A PROGRAM SPONSORED BY AN ASSOCIATION OF DEALERS IN WHICH VARIOUS PRODUCTS OF THE ASSOCIATION ARE MENTIONED, AND IN WHICH NO COMMERCIAL TIME IS LOGGED, IS HELD TO BE A VIOLATION OF SEC. 73.670(A)(2). ***TAFT B/CING CO.*** 39FCC2D1070

COMMERCIALS, FAILURE TO LOG

A PROGRAM SPONSORED BY AN ASSOCIATION OF DEALERS IN WHICH VARIOUS PRODUCTS OF THE ASSOCIATION ARE MENTIONED, AND IN WHICH NO COMMERCIAL TIME IS LOGGED, IS HELD TO BE A VIOLATION OF SEC. 73.670(A)(2). ***TAFT B/CING CO.*** 39FCC2D1070

COMMISSION PROCEEDINGS, AUDIO-VISUAL COVERAGE OF

PUBLIC NOTICE OF THE ADOPTION OF A STATEMENT OF GENERAL GUIDELINES FOR AUDIO AND/OR VISUAL COVERAGE OF COMMISSION PROCEEDINGS IN LIGHT OF INCREASING PUBLIC INTEREST. ***AUDIO VISUAL COVERAGE*** 39FCC2D0373

COMMUNICATION SATELLITE SERVICE

PETITION FOR COMMISSION DETERMINATION THAT NO FILING OR GRANT FEE BE APPLICABLE TO THE LAUNCH OF INTELSAT IV F-3 SATELLITE BECAUSE THE GRANT OF CONSTRUCTION AUTHORITY WAS MADE PRIOR TO THE ADOPTION OF THE FEE SCHEDULE DENIED SINCE THE FEE ATTACHES WHEN LAUNCHED AND OPERATIONAL SEC. 1.1113 DISCUSSED. ***COMMUNICATIONS SATELLITE CORP.*** 39FCC2D0549

COMMUNITY NEEDS

APPLICATION PREVIOUSLY DISMISSED (27FCC2D66) ON DUOPOLY RULE(SEC. 73.35) REINSTATED AND DESIGNATED FOR HEARING ON ISSUES AS TO FINANCIAL, AREAS AND POPULATIONS, 307(B), OVERLAP, AND COMMUNITY NEEDS. REQUESTS FOR WAIVER OF SECS. 1.580(B), 1.580(B), 1.569(B)(2)(I) (TRANSMITTER SITE LOCATION) AND SECS. 1.571(C) AND 1.227(B)(1) ARE GRANTED. ***QUINNIPIAC VALLEY SERVICE, INC.*** 39FCC2D0948

COMMUNITY SURVEY

APPLICATION FOR RENEWAL OF LICENSE GRANTED SINCE PETITION TODENY FAILED TO MEET 390(D) REQUIREMENTS OF ALLEGING SPECIFIC ACTS TO ESTABLISH A PRIMA FACIE CASE FOR DENIAL AS TO EQUAL EMPLOYMENT OPPORTUNITIES, COMMUNITY NEEDS AND ACCESS TO PUBLIC FILES (SEC. 1.539). ***AVCO BROADCASTING CORP.*** 39FCC2D0004

AVCO B/CING CORP. DECISION GRANTING RENEWAL OF TV B/C LICENSE AFFIRMED W/O OPINION THE BILINGUAL CULTURAL COALITION ON MASS MEDIA V. FCC (D.C. CIR. 72-2205). ***AVCO BROADCASTING CORP.*** 39FCC2D0004

APPLICATION FOR LICENSE RENEWAL GRANTED SINCE THE PETITION TO DENY FAILED TO ESTABLISH MATERIAL QUESTION FACT (SEC. 309 (D)), CONCERNING EMPLOYMENT PRACTICES, PROGRAMMING AVAILABILITY OF PUBLIC FILE AND ASCERTAINMENT OF COMMUNITY PROBLEMS. ***MAHONING VALLEY B/CING CORP.*** 39FCC2D0052

PETITION TO ENLARGE ISSUES TO INCLUDE FINANCIAL QUALIFICATIONS, STUDIO ADEQUACY, AND MISREPRESENTATION GRANTED TO DETERMINE IF THERE WAS A MISREPRESENTATION OF FACTS CONCERNING THE COMMUNITY SURVEY SINCE AT LEAST SIX PERSONS HAVE SWORN THEY WERE NOT INTERVIEWED AS PURPORTED. ***CALIFORNIA STEREO, INC.*** 39FCC2D0401

MOTION TO ENLARGE ISSUES IN A COMPARATIVE PROCEEDING TO INCLUDE A SUBURBAN ISSUE GRANTED SINCE THE EDGEFIELD-SALUDA TEST AS TO SUBSTANTIAL SHOWING HAS BEEN MET. ***ST. CROSS B/CING, INC.*** 39FCC2D1067

COMPARATIVE COVERAGE ISSUE

MOTION TO ENLARGE ISSUES TO COMPARATIVELY CONSIDER PUBLIC INTEREST BENEFITS OF TRANSLATOR AND RELAY AUTHORIZATIONS GRANTED TO RENEWAL APPLICANT AND ABILITY OF NEW APPLICANT TO PROVIDE COMPARABLE SERVICE. DENIED SINCE ULTIMATE EFFECTS OF PREVIOUS AUTHORIZATIONS IS HIGHLY SPECULATIVE. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1096

COMPLAINT

COMPLAINT REQUESTING REVOCATION OF STATION LICENSE FOR INACCURATE AND MISLEADING NEWS BROADCASTS AND HARASSMENT DENIED SINCE THE ALLEGATIONS ARE UNSUPPORTED BY EVIDENCE. ***MARTIN-TRIGONA, ANTHONY R.*** 39FCC2D0069

COMPLAINT ALLEGING THAT LICENSEE SUBORDINATED PUBLIC TO PRIVATE INTEREST BY FORBIDDING NEWS ITEMS OFFENSIVE TO ADVERTISERS AND TERMINATION OF COMPLAINANTS EMPLOYMENT DISMISSED, SINCE DISMISSAL WAS DUE TO COMPLAINANTS ABUSE OF STATION POLICY IN BROADCASTING AND LEAVING STATION WITHOUT NOTICE. ***BRAMBLE, MIKE*** 39FCC2D0992

COMSAT

REQUEST FOR THE INSPECTION OF SUMMARY RECORD OF THE 62ND MEETING OF ICS, CONCERNING THE INTELSAT IV SATELLITE SERIES, GRANTED IN PART PURSUANT TO THE REVIEW REQUIREMENTS OF 0.461 (D)(2), BUT REQUEST FOR DELAY OF FURTHER COMMISSION ACTION ON THE SERIES DENIED DUE TO THE IMMEDIATE NEED FOR ACTION AND TIMING OF THE REQUEST. ***ITT WORLD COMM., INC.*** 39FCC2D0593

CONCENTRATION OF CONTROL

APPLICATION FOR NEW FM STATION PREVIOUSLY DELAYED DUE TO POTENTIAL OVERLAP OF CONTOURS AND REGIONAL CONCENTRATION ISSUES, IS GRANTED SINCE SUFFICIENT EVIDENCE OF DILUTION OF MEDIA IN THE AREA, ABSENCE OF OVERLAP, AND NO MILEAGE SEPARATION PROBLEMS HAS BEEN SUBMITTED. ***MUSKEGON HEIGHTS B/CING CO., INC.*** 39FCC2D0475

CORRECTIVE ACTION SUBSEQUENT TO CITATION

PETITION FOR ORDERS TO SHOW CAUSE ALLEGING THAT PRODUCTION OF WIRELESS AUDITORY TRAINING MICROPHONES ARE IN VIOLATION OF THE RULES, AND FOR A CEASE & DESIST ORDER, DISMISSED, SINCE AN AGREEMENT TO CORRECT AND COMPLY HAS BEEN MADE. ***ELECTRONIC FUTURES, INC.*** 39FCC2D0141

COURTS JURISDICTION OF

PETITION TO DENY ASSIGNMENT OF LICENSE BY RECEIVER DENIED SINCE THE COURT WHICH HAS JURISDICTION OF THE RECEIVER HAS APPROVED THE ASSIGNMENT SUBJECT TO COMMISSION APPROVAL, AND PETITIONER, AN UNSUCCESSFUL PROSPECTIVE ASSIGNEE, HAS NO STANDING BEFORE THE COMMISSION. (SEC. 310(B)). ***GORMAN, LEON P., JR. RECEIVER*** 39FCC2D0037

COVERAGE

FM APPLICATION GRANTED ON BASIS OF PREFERENCE IN COVERAGE AND DIVERSIFICATION SINCE SUCCESSFUL APPLICANT OWNS THE LOCAL CATV SYSTEM AND COMPETING APPLICANT IS LICENSEE OF THE ONLY AM STATION IN THE CITY. ***GLADDENBEGK, ERWIN*** 39FCC2D0575

CROSS INTEREST

APPLICATIONS FOR ASSIGNMENT OF LICENSES GRANTED SUBJECT TO THE OUTCOME OF AN INVESTIGATION INTO POSSIBLE LICENSEE MISCONDUCT AND ELIMINATION OF A CROSS-INTEREST CONFLICT. ***TWIN STATES B/CING CO.*** 39FCC2D0835

CROSS MODULATION

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCETHE EVENTUAL NEED TO COMPLY WITH THE CROSS-OWNERSHIP RULES, SECTION 76.501(A), IS NOT SUFFICIENT REASON TO DELAY SYSTEM OPERATION. ***VALLEY CABLEVISION CORP.*** 39FCC2D0113

CROSS OWNERSHIP

TAX CERTIFICATE ISSUED FOR SALE OF INTEREST IN A CABLE TELEVISION SYSTEM PURSUANT TO THE PROHIBITIONS OF 76.501 AGAINST CROSS OWNERSHIP OF CABLE SYSTEMS AND TELEVISION BROADCAST STATIONS. ***COX-COSMOS, INC.*** 39FCC2D0139

APPLICATION FOR TAX CERTIFICATE GRANTED SINCE DIVESTITURE WAS REQUIRED BY SEC. 64.601 TO ELIMINATE CROSS OWNERSHIP, AND INTERESTS IN BOTH LAND-LINE COMMON CARRIER TELEPHONE SERVICES AND CABLE TELEVISION SYSTEMS IN ONE AREA MEETS THE REQUIREMENTS OF SEC. 1071 OF THE INTERNAL REVENUE CODE. ***MID-TEXAS COMM. SYSTEMS, INC.*** 39FCC2D0175

APPLICATION FOR NEW STATION AND MODIFICATION OF EXISTING STATION IN THE DOMESTIC PUBLIC POINT-TO-POINT MICROWAVE RADIO SERVICE, TO RELAY DISTANT SIGNAL, GRANTED SINCE IN COMPLIANCE WITH DISTANT SIGNAL CARRIAGE RULES AND THERE IS PRESENTLY NO CROSS OWNERSHIP RESTRICTION CONCERNING MASS MEDIA OWNERS AND COMMON CARRIERS. ***EASTERN MICROWAVE, INC.*** 39FCC2D0414

MOTION TO ENLARGE ISSUES TO INCLUDE SUBURBAN AND CROSS OWNERSHIP ISSUES DENIED FOR INSUFFICIENCY OF ALLEGATIONS. EXISTING SUBURBAN COMMUNITY 307(B) ISSUE IS BROADENED TO INCLUDE DETERMINATION WITH RESPECT TO SANTA CLARA, CALIF. ***ST. CROSS B/CING, INC.*** 39FCC2D0970

DE MINIMIS

MOTION TO ENLARGE ISSUES TO INCLUDE FAILURE TO REPORT BROADCAST INTEREST DENIED SINCE OMISSIONS ARE DE MINIMUS AND INSIGNIFICANT. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1094

DECISION MODIFICATION

JOINT APPLICATION REQUESTING MODIFICATION OF CANTAT-11 ORDERGRANTING CONSTRUCTION AND OPERATION OF TAT-6 AND SUBMARINE CABLE BETWEEN U.S. AND FRANCE AND SUBMARINE CABLE BETWEEN CANADA AND UNITED KINGDOM (35FCC2D801) GRANTED IN PART AND DENIED IN PART. ***AMER. TEL. & TEL. CO.*** 39FCC2D0865

DELAY

REQUEST FOR IMMEDIATE GRANT OF LICENSE ASSIGNMENT AND RESCINDING OF DEFERRAL ACTION, DENIED SINCE THE PUBLIC INTEREST WOULD BEST BE SERVED BY CONTINUATION OF THE DEFERRAL UNTIL A PENDING APPEAL BEFORE THE COURT OF APPEALS IS DECIDED. ***WEBSTER, WALTER E. JR., RECEIVER*** 39FCC2D0538

DELAY IMPROPER

REQUEST FOR THE INSPECTION OF SUMMARY RECORD OF THE 62ND MEETING OF ICS, CONCERNING THE INTELSAT IV SATELLITE SERIES, GRANTED IN PART PURSUANT TO THE REVIEW REQUIREMENTS OF 0.461 (D)(2), BUT REQUEST FOR DELAY OF FURTHER COMMISSION ACTION ON THE SERIES DENIED DUE TO THE IMMEDIATE NEED FOR ACTION AND TIMING OF THE REQUEST. ***ITT WORLD COMM., INC.*** 39FCC2D0593

DISCRIMINATION

COMPLAINT CONCERNING SECTION 315 EQUAL OPPORTUNITY RULING DISMISSED SINCE LICENSEE DID NOT INTENTIONALLY DISCRIMINATE BY FIRST ADVISING COMPLAINANT THAT NO SPOT ANNOUNCEMENTS WOULD BE AVAILABLE FOR HIS PRIMARY RACE, WHICH ADVICE WAS IN ERROR, AND ALLOWING HIS OPPONENT TIME. LICENSEE FOUND TO BE IN VIOLATION OF SEC. 73.657(A)(2). ***HARRISON, JAMES L.*** 39FCC2D0504

DISCRIMINATION EMPLOYMENT

AVCO B/CING CORP. DECISION GRANTING RENEWAL OF TV B/C LICENSE AFFIRMED W/O OPINION THE BILINGUAL CULTURAL COALITION ON MASS MEDIA V. FCC (D.C. CIR. 72-2205). ***AVCO BROADCASTING CORP.*** 39FCC2D0004

APPLICATION FOR LICENSE RENEWAL (SEC. 309(D)) GRANTED. SINCETHE PETITION TO DENY FAILED TO ESTABLISH ANY SUBSTANTIAL AND MATERIAL QUESTIONS OF FACT CONCERNING ALLEGED DISCRIMINATORY EMPLOYMENT PRACTICES AND INADEQUATE COMMUNITY SURVEY. ***GREAT TRAILS B/CING CORP.*** 39FCC2D0039

APPLICATION FOR LICENSE RENEWAL GRANTED SINCE THE PETITION TO DENY FAILED TO ESTABLISH MATERIAL QUESTION FACT (SEC. 309 (D)), CONCERNING EMPLOYMENT PRACTICES, PROGRAMMING AVAILABILITY OF PUBLIC FILE AND ASCERTAINMENT OF COMMUNITY PROBLEMS. ***MAHONING VALLEY B/CING CORP.*** 39FCC2D0052

COMPLAINT OF EMPLOYMENT DISCRIMINATION DISMISSED AND RENEWALGRANTED SUBJECT TO FURTHER ACTION PENDING OUTCOME OF EMPLOYMENT DISCRIMINATION PROCEEDING BEFORE THE STATE HUMAN RELATIONS COMMISSION. ***PRIME TIME ACCESS RULE*** 39FCC2D0077

DISSENTING STATEMENT

ASSIGNMENT OF STANDARD AND FM LICENSES APPROVED. ***KOPS-MONOHAN COMM., INC.*** 39FCC2D0470

COMMISSIONER JOHNSON DISSENT FROM FCC ACTION RENEWING LICENSES IN THE FLORIDA-PUERTO RICO-VIRGIN ISLANDS RENEWAL GROUP. ***FLORIDA RENEWALS-1973*** 39FCC2D1035

DIVERSIFICATION CONTROL OF MASS MEDIA

APPLICATION FOR TRANSFER OF CONTROL AND FOR WAIVER OF SECTIONS 73 35, 73.240 AND 73.636 ONE-TO-A-MARKET WHERE ACQUISITION WILL RESULT IN COMMON OWNERSHIP OF AURAL AND TELEVISION FACILITIES IN THE SAME MARKET. GRANTED AND TRANSFER APPROVED SINCE IT FURTHERS DIVERSITY IN MASS MEDIA. ***R. W. PAGE CORPORATION*** 39FCC2D0487

FM APPLICATION GRANTED ON BASIS OF PREFERENCE IN COVERAGE AND DIVERSIFICATION SINCE SUCCESSFUL APPLICANT OWNS THE LOCAL CATV SYSTEM AND COMPETING APPLICANT IS LICENSEE OF THE ONLY AM STATION IN THE CITY. ***GLADDENBEGK, ERWIN*** 39FCC2D0575

DIVESTMENT

APPLICATION FOR ISSUANCE OF TAX CERTIFICATE FOR SALE OF INTEREST IN A CABLE TV SYSTEM BY A BROADCAST LICENSEE GRANTED AND REQUESTED CERTIFICATE ISSUED TO CONFORM WITH DIVESTITURE REQUIREMENTS OF SEC. 76.501. ***FISHERS BLEND STATION, INC.*** 39FCC2D0927

DIVESTMENT TIME FOR

PETITION FOR RECONSIDERATION OF SECOND REPORT AND ORDER IN DOCKET NO. 18397, 23 FCC2D816 , ADOPTING SEC. 76.501 REGARDING DIVESTITURE REQUIREMENTS FOR CABLE TELEVISION CROSS-OWNERSHIP, DENIED EXCEPT TO EXTEND THE GRACE PERIOD TO AUGUST 10, 1975, AND TO ENCOURAGE THE FILING OF WAIVER PETITIONS. ***CABLE TELEVISION CROSS-OWNERSHIP*** 39FCC2D0377

DIVESTURE

APPLICATION FOR TAX CERTIFICATE GRANTED SINCE DIVESTITURE WAS REQUIRED BY SEC. 64.601 TO ELIMINATE CROSS OWNERSHIP, AND INTERESTS IN BOTH LAND-LINE COMMON CARRIER TELEPHONE SERVICES AND CABLE TELEVISION SYSTEMS IN ONE AREA MEETS THE REQUIREMENTS OF SEC. 1071 OF THE INTERNAL REVENUE CODE. ***MID-TEXAS COMM. SYSTEMS, INC.*** 39FCC2D0175

OF TWO PETITIONS FOR LEAVE TO AMEND APPLICATIONS AN AMENDMENT FOR COMMUNITY SURVEY IS DISMISSED AS MOOT AND THE OTHER, DEALING WITH STOCK DIVESTITURE, GRANTED SINCE IT IS FOR GOOD CAUSE AND WILL NOT WORK TO THE DETRIMENT OF ANY OTHER APPLICANT. ***JOBBINS, CHARLES W.*** 39FCC2D0595

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

APPLICATION FOR ASSIGNMENT OF LICENSE IN THE DOMESTIC LAND MOBILE RADIO SERVICE GRANTED SINCE NO FACTUAL CONTENTIONS TO BASE A CLAIM OF DISCRIMINATORY RATES OR PUBLIC INCONVENIENCE HAVE BEEN MADE TO WARRANT A HEARING UNDER 309 (D)(2). ***NORTHERN MOBILE TELEPHONE CO.*** 39FCC2D0608

REQUEST FOR ORAL ARGUMENT BEFORE THE COMMISSION EN BANC IN THE MATTER OF APPLICATIONS FOR RENEWAL OF LICENSES OF RADIO COMMON CARRIER STATIONS IN THE DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE, DENIED. CASE REOPENED AND REMANDED TO ADMINISTRATIVE LAW JUDGE TO ASCERTAIN INFORMATION RE PRICING PRACTICES OF APPLICANT. ***UNITED TELEPHONE CO. OF OHIO*** 39FCC2D0845

DOMESTIC PUBLIC POINT-TO-POINT MICROWAVE RADIO SERVICE

APPLICATION FOR NEW STATION AND MODIFICATION OF EXISTING STATION IN THE DOMESTIC PUBLIC POINT-TO-POINT MICROWAVE RADIO SERVICE, TO RELAY DISTANT SIGNAL, GRANTED SINCE IN COMPLIANCE WITH DISTANT SIGNAL CARRIAGE RULES AND THERE IS PRESENTLY NO CROSS OWNERSHIP RESTRICTION CONCERNING MASS MEDIA OWNERS AND COMMON CARRIERS. ***EASTERN MICROWAVE, INC.*** 39FCC2D0414

ECONOMIC IMPACT

APPLICATION FOR NEW UHF TELEVISION TRANSLATOR STATION GRANTED SINCE THE SERVICE HAD BEEN PROVIDED FOR MANY YEARS THROUGH ANOTHER STATION, AND THE PRESENT APPLICATION IS BUT A CONTINUATION OF THAT SERVICE. NO ALLEGATIONS OF FACT HAVE BEEN ADVANCED TO SHOW ADVERSE IMPACT ON EXISTING STATION. ***TELEMUNDO, INC.*** 39FCC2D0829

EDGEFIELD-SALUDA TEST

MOTION TO ENLARGE ISSUES IN A COMPARATIVE PROCEEDING TO INCLUDE A SUBURBAN ISSUE GRANTED SINCE THE EDGEFIELD-SALUDA TEST AS TO SUBSTANTIAL SHOWING HAS BEEN MET. ***ST. CROSS B/CING, INC.*** 39FCC2D1067

EDUCATIONAL BROADCASTS

REQUEST FOR WAIVER OF SEC. 74.631(D) CONCERNING THE MULTIPLEXING OF ADDITIONAL EDUCATIONAL PROGRAM MATERIAL GRANTED, PROVIDED THE TELEVISION INTERCITY RELAY SYSTEM DOES NOT OPERATE SOLELY TO RELAY THIS SIGNAL. ***WGBH EDUCATIONAL FOUNDATION*** 39FCC2D0115

EMERGENCY LOCATOR TRANSMITTERS

PARTS 1, 2 AND 87 OF THE RULES AMENDED TO PROVIDE FOR LICENSING, TESTING AND OPERATION OF AN EMERGENCY LOCATOR TRANSMITTER AND TO SPECIFY FREQUENCIES AVAILABLE FOR ITS USE. ***EMERGENCY LOCATOR TRANSMITTERS*** 39FCC2D1004

EMERGENCY OPERATIONS

PETITION FOR RECONSIDERATION OF DECISION GRANTING EMERGENCY SPECIAL TEMPORARY AUTHORITY PURSUANT TO 309(F) TO CONSTRUCT AND OPERATE A UHF TRANSLATOR STATION, PENDING ACTION ON APPLICATION FOR REGULAR AUTHORITY. DENIED AND EMERGENCY AUTHORITY REAFFIRMED, SINCE NO SHOWING OF PUBLIC DETRIMENT, PRIVATE OR ECONOMIC INJURY, HAS BEEN MADE. ***TELEMUNDO, INC.*** 39FCC2D0522

APPLICATION FOR WAIVERS, FOR ACCEPTANCE, AND FOR SPECIAL TEMPORARY AUTHORITY TO OPERATE SILENT AM AND FM STATIONS GRANTED AND SECS. 1.516(C), 1.517(C) ARE WAIVED TO ALLOW EARLY CONSIDERATION OF PERMANENT AUTHORIZATION PURSUANT TO SEC. 309(F) SINCE EXTRAORDINARY CIRCUMSTANCES EXIST TO RESTORE THE ONLY LOCAL BROADCAST SERVICES AVAILABLE. ***MID-MICHIGAN B/CING CORP.*** 39FCC2D0173

EMISSIONS SPURIOUS

SEC. 15.309(B) AMENDED TO FURTHER SUPPRESS SPURIOUS EMISSIONS FROM SENSORS OPERATING 915, 2450 AND 5800 MHZ BANDS. REQUEST FOR WAIVER OF AMENDED RULE DENIED. ***FIELD DISTRUBANCE SENSORS*** 39FCC2D0713

EMPLOYEE

COMPLAINT ALLEGING THAT LICENSEE SUBORDINATED PUBLIC TO PRIVATE INTEREST BY FORBIDDING NEWS ITEMS OFFENSIVE TO ADVERTISERS AND TERMINATION OF COMPLAINANTS EMPLOYMENT DISMISSED, SINCE DISMISSAL WAS DUE TO COMPLAINANTS ABUSE OF STATION POLICY IN BROADCASTING AND LEAVING STATION WITHOUT NOTICE. ***BRAMBLE, MIKE*** 39FCC2D0992

EQUAL EMPLOYMENT OPPORTUNITY RULE

APPLICATIONS REQUESTING AUTHORITY TO OPERATE STATION ACCEPTED FOR FILING SINCE IN CONFORMITY WITH COMMISSION RULES, EXCEPT FOR ONE WHICH IS ACCEPTED ON CONDITION THAT WITHIN 30 DAYS IT SHALL BE AMENDED TO INCLUDE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM ON SECTION VI OF FCC FORM 301 IN ACCORDANCE WITH REQUIREMENTS OF SEC. 73.125(C). 73.125 C . ***W.M.E.D. ASSOCIATES, INC.*** 39FCC2D0292

EQUAL OPPORTUNITY

COMPLAINT CONCERNING EQUAL TIME PROVISIONS OF SECTION 315 DENIED SINCE NON OF THE APPLICANTS WERE LEGALLY QUALIFIED CANDIDATES UNDER STATE OR NATIONAL REQUIREMENTS, OR UNDER SECTION 73.657(A), AND SINCE NEITHER HAD ARRIVED AT THE PRESCRIBED AGE FOR CANDIDATES FOR PRESIDENT AND VICE PRESIDENT. ***SOCIALIST WORKER PARTY 1972*** 39FCC2D0089

APPLICATION FOR RENEWAL OF LICENSE GRANTED SINCE PETITION TODENY FAILED TO MEET 390(D) REQUIREMENTS OF ALLEGING SPECIFIC ACTS TO ESTABLISH A PRIMA FACIE CASE FOR DENIAL AS TO EQUAL EMPLOYMENT OPPORTUNITIES, COMMUNITY NEEDS AND ACCESS TO PUBLIC FILES (SEC. 1.539). ***AVCO BROADCASTING CORP.*** 39FCC2D0004

AVCO B/CING CORP. DECISION GRANTING RENEWAL OF TV B/C LICENSE AFFIRMED W/O OPINION THE BILINGUAL CULTURAL COALITION ON MASS MEDIA V. FCC (D.C. CIR. 72-2205). ***AVCO BROADCASTING CORP.*** 39FCC2D0004

COMPLAINT CONCERNING SECTION 315 EQUAL OPPORTUNITY RULING DISMISSED SINCE LICENSEE DID NOT INTENTIONALLY DISCRIMINATE BY FIRST ADVISING COMPLAINANT THAT NO SPOT ANNOUNCEMENTS WOULD BE AVAILABLE FOR HIS PRIMARY RACE, WHICH ADVICE WAS IN ERROR, AND ALLOWING HIS OPPONENT TIME. LICENSEE FOUND TO BE IN VIOLATION OF SEC. 73.657(A)(2). ***HARRISON, JAMES L.*** 39FCC2D0504

COMPLAINT CONCERNING FAILURE OF BROADCAST MEDIA TO GIVE EQUAL NEWS COVERAGE TO COMPLAINANT AS A CANDIDATE, DISMISSED SINCE THE COMMISSION WILL NOT SUBSTITUTE ITS NEWS JUDGMENT FOR THAT OF A BROADCASTER IN THE ABSENCE IF DELIBERATE DISTORTION. ***ODONNELL, ROBERT E.*** 39FCC2D0508

EQUAL OPPORTUNITY CLAUSE

COMPLAINTS ALLEGING FAILURE TO PRESENT VIEWS CONTRARY TO ANTI-MINING AND BOMBING NORTH VIETNAM PROGRAM DENIED SINCE OPPOSING VIEWS HAD BEEN BROADCAST. COMPLAINT REGARDING FAILURE TO PROVIDE EQUAL TIME UNDER SECS. 315, 312(A)(7), AND ENDORSEMENT OF CANDIDATE UNDER SEC. 399, DISMISSED SINCE UNSUPPORTED. ***ROWLEY, HORACE P.*** 39FCC2D0437

EQUAL OPPORTUNITY, EXEMPT PROGRAMS, NEWSCAST BONA FIDE

COMPLIANCE CONCERNING 315 POLITICAL BROADCASTS DISMISSED SINCE EQUAL TIME IS NOT REQUIRED TO A BONA FIDE NEWSCAST OF A CANDIDATE, AND NO EVIDENCE REGARDING A PERSONAL ATTACK ON HONESTY, CHARACTER OR INTEGRITY HAS BEEN PRO-

VIDED, AND 73.123(C) ONLY REQUIRES AN OPPORTUNITY TO RESPOND TO AN AUTHORIZED EDITORIAL OF ENDORSEMENT. ***RIHERD, MRS. CARMEN C.*** 39FCC2D0617

EQUITABLE DISTRIBUTION OF BROADCAST FACILITIES

APPLICATION TO CHANGE LOCATION AND CLASS OF STATION FROM CLASS II TO CLASS III DENIED SINCE THE PROPOSED OPERATION WOULD LOSE A PORTION OF ITS BROADCAST DAY BY DISCONTINUANCE OF PRE-SUNRISE OPERATION, AND THE 307(B) ISSUE (EQUITABLE DISTRIBUTION OF BROADCAST FACILITIES) IS CONTROLLING. COMPETING APPLICATION GRANTED. ***SADOW, JAY*** 39FCC2D0808

EVIDENCE RIGHT TO INTRODUCE

PETITION FOR RECONSIDERATION OF REVIEW BOARD DECISION (37 FCC2D686) DENYING APPLICATION TO OPERATE FORMER FACILITIES OF KICM ON BASIS OF UNAUTHORIZED TRANSFER OF CONTROL, INTRODUCTION OF EVIDENCE, FIANACIAL, MISREPRESENTATION, SEC. 1.65 AND EX PARTE ISSUES, DENIED SINCE SAME ADVERSE DETERMINATION ON THE ISSUES EXISTS. ***VOICE OF REASON, INC.*** 39FCC2D0847

EX PARTE

PETITION FOR RECONSIDERATION OF REVIEW BOARD DECISION (37 FCC2D686) DENYING APPLICATION TO OPERATE FORMER FACILITIES OF KICM ON BASIS OF UNAUTHORIZED TRANSFER OF CONTROL, INTRODUCTION OF EVIDENCE, FIANACIAL, MISREPRESENTATION, SEC. 1.65 AND EX PARTE ISSUES, DENIED SINCE SAME ADVERSE DETERMINATION ON THE ISSUES EXISTS. ***VOICE OF REASON, INC.*** 39FCC2D0847

EXCEPTION

MOTION FOR CLARIFICATION OF EXCEPTION TO REVIEW BOARD DECISION 38FCC2D803 AFFIRMING INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE GRANTED TO THE EXTENT THAT THE GENERAL TELEPHONE COS. OF CALIFORNIA, FLORIDA AND WISCONSIN ARE HELD TO BE CONNECTING CARRIERS. ***U.S. DEPARTMENT OF DEFENSE*** 39FCC2D0843

EXCEPTION INITIAL DECISION

EXCEPTIONS TO INITIAL DECISION ISSUING CEASE AND DESIST ORDER FOR VIOLATION OF SEC. 74.1105(A) (CARRYING TV SIGNALS WITHOUT PROPER NOTICE) DENIED SINCE, UNTIL A CABLE TELEVISION SYSTEM COMPLIED WITH THIS RULE, THE MERITS OF ITS SERVICE WILL NOT BE CONSIDERED. ***TELE-CEPTION OF WINCHESTER, INC.*** 39FCC2D0280

FACILITY MODIFIED

APPLICATION TO MODIFY CLASS IV LICENSE BY DISMANTLING ONE OFTWO TOWERS AND OPERATING NON-DIRECTIONALLY DURING DAYTIME DENIED, SINCE BENEFITS OF PRESENT DIRECTIONAL DAYTIME OPERATION OUTWEIGH OTHER CONSIDERATIONS AND APPLICANT FAILED TO MEET THE PREPONDERANT NEED TEST. ***OLYMPIAN B/CING CORP.*** 39FCC2D0787

FAILURE TO DISCLOSE

A REIMBURSEMENT AGREEMENT DEPENDENT UPON A FAVORABLE RULING ON SECS. 1.514(A) AND 1.65 ISSUES (FAILURE TO REPORT CHANGES) GRANTED, SINCE THE FAILURE TO REPORT WAS DUE TO A MISUNDERSTANDING OF THE APPLICATION DIRECTIONS. ***SANDHILL COMMUNITY B/CERS, INC.*** 39FCC2D0086

PETITION TO ENLARGE ISSUES TO INCLUDE A SEC. 1.65 ISSUE DENIED SINCE THE MATTER ALLEGED TO HAVE BEEN UNREPORTED WAS FULLY REPORTED IN OTHER COMMISSION DECISIONS AND OPINIONS. ***SALEM BROADCASTING CO., INC.*** 39FCC2D0500

PETITION TO ENLARGE ISSUES TO INCLUDE A SEC. 1.65 ISSUE DENIED SINCE THE ALLEGATIONS REGARDING FAILURES TO REPORT WERE EITHER INACCURATE OR INSIGINIFICANT. ***SALEM BROADCASTING CO, INC.*** 39FCC2D0501

MOTION TO ENLARGE ISSUES GRANTED TO ADD ISSUES AS TO MISREPRESENTATION AND COMPLIANCE WITH SECTION 1.65 PROVISIONS SINCE APPARENT MISSTATEMENTS HAVE RAISED A SUFFICIENT QUESTION OF APPLICANTS QUALIFICATIONS. ***ST. CROSS B/C-ING, INC.*** 39FCC2D0514

FAILURE TO PROVIDE EVIDENCE

COMPLAINT CONCERNING BIASED PRESENTATION OF VIEWS DISMISSED,SINCE ONE MUST PROVIDE SPECIFIC INFORMATION SETTING FORTH REASONABLE GROUNDS FOR THE COMPLAINANTS CONCLUSION THAT THE OVERALL PROGRAMMING HAS NOT ATTEMPTED TO PRESENT OPPOSING VIEWS ON CONTROVERSIAL ISSUES. ***SKONE-PALMER, DONALD C.*** 39FCC2D0028

COMPLAINT CONCERNING VIOLATION OF THE FAIRNESS DOCTRINE DISMISSED SINCE THE NEEDED INFORMATION TO SUPPORT SUCH COMPLAINT WAS NOT PROVIDED AS DESCRIBED IN PUBLIC NOTICE OF JULY 1, 1964. ***ENGEL, RANDY*** 39FCC2D0030

FAIRNESS DOCTRINE ACCESS TO BROADCAST FACILITIES

COMPLAINTS ALLEGING FAILURE TO PRESENT VIEWS CONTRARY TO ANTI-MINING AND BOMBING NORTH VIETNAM PROGRAM DENIED SINCE OPPOSING VIEWS HAD BEEN BROADCAST. COMPLAINT REGARDING FAILURE TO PROVIDE EQUAL TIME UNDER SECS 315, 312(A)(7), AND ENDORSEMENT OF CANDIDATE UNDER SEC. 399, DISMISSED SINCE UNSUPPORTED. ***ROWLEY, HORACE P.*** 39FCC2D0437

REFUSAL TO ACCEPT ADVERTISING OR RESPONSE TO BROADCAST, AFTER COSE OF BUSINESS, HELD TO BE A VIOLATION OF THE FAIRNESS DOCTRINE WHERE BROADCAST OF UNION ELECTION BY OPPOSING SIDE WAS AIRED THE NIGHT BEFORE THE ELECTION. LICENSEE IMPROPERLY HANDLED CONTROVERSIAL ISSUE OF PUBLIC IMPORTANCE, ESPECIALLY WHEN TIME WAS OF THE ESSENCE. ***NATL. ASSN. OF GOVT. EMPLOYEES*** 39FCC2D1019

FAIRNESS DOCTRINE APPROPRIATE SPOKESMAN

PETITION FOR RECONSIDERATION OF GRANT OF REVIEW OF RULING OFFAILURE TO COMPLY WITH THE FAIRNESS DOCTRINE 34FCC2D733 REGARDING THE PRESENTATION OF OPPOSING VIEWPOINTS DENIED SINCE THE ISSUE TO BE DETERMINED IS THE EFFORTS TO OBTAIN RESPONSIBLE REPRESENTATION OF CONTRASTING VIEWS. ***SLATEN, THOMAS M.*** 39FCC2D0016

FAIRNESS DOCTRINE CONTRASTING VIEWPOINT DUTY TO ENCOURAGE

COMPLIANT ALLEGING FAILURE TO PRESENT OPPOSING VIEWS TO CRITICS OF THE PRESIDENTS POLICY IN VIETNAM, IN VIOLATION OF 396 (G)(1)(A), DISMISSED SINCE COMPLAINT FAILS TO DISCLOSE GROUNDS FOR CONCLUDING THAT REASONABLE OPPORTUNITY HAS NOT BEEN AFFORDED IN OVERALL PROGRAMMING. ***ACCURACY IN MEDIA, INC.*** 39FCC2D0558

COMPLAINT THAT STATION FAILED IN ITS AFFIRMATIVE DUTY TO ENCOURAGE AND IMPLEMENT CONTRASTING POINTS OF VIEW DISMISSED SINCE THERE IS NO EVIDENCE TO INDICATE THE STATION ACTED UNREASONABLY IN REGARD TO COVERAGE OF VIEWS INVOLVED. ***MILLER, ESTELLE L.*** 39FCC2D0424

FAIRNESS DOCTRINE CONTRASTING VIEWPOINT EXPRESSION OF

COMPLAINT CONCERNING FAILURE TO PRESENT OPPOSING VIEWS DISMISSED SINCE THE STATION HAS PRESENTED OPPOSING VIEWS. ***NATIONAL ORGANIZATION FOR WOMEN*** 39FCC2D0020

COMPLAINT CONCERNING FAILURE TO PRESENT OPPOSING VIEWPOINTS ON THE ISSUES OF A DOCUMENTARY ON DRUG TRAFFIC IN SOUTHEAST ASIA DISMISSED SINCE THERE WERE NO GROUNDS FOR CONCLUDING THAT A ONE-SIDED PRESENTATION HAD OCCURRED. ***ACCURACY IN MEDIA, INC.*** 39FCC2D0022

COMPLAINT FOR FAILURE TO PRESENT OPPOSING VIEWS ON AIRLINE HIJACKING, NEWS TREATMENT, AND DRUGS, DISMISSED SINCE DETAILED AND SPECIFIC EVIDENCE OF FAILURE TO COMPLY WITH THE FAIRNESS DOCTRINE HAS NOT BEEN SUBMITTED. ***MARTIN-TRIGONA, ANTHONY R.*** 39FCC2D0025

COMPLAINT CONCERNING BIASED PRESENTATION OF VIEWS DISMISSED,SINCE ONE MUST PROVIDE SPECIFIC INFORMATION SETTING FORTH REASONABLE GROUNDS FOR THE COMPLAINANTS CONCLUSION THAT THE OVERALL PROGRAMMING HAS NOT ATTEMPTED TO PRESENT OPPOSING VIEWS ON CONTROVERSIAL ISSUES. ***SKONE-PALMER, DONALD C.*** 39FCC2D0028

COMPLAINT CONCERNING VIOLATION OF THE FAIRNESS DOCTRINE DISMISSED SINCE THE NEEDED INFORMATION TO SUPPORT SUCH COMPLAINT WAS NOT PROVIDED AS DESCRIBED IN PUBLIC NOTICE OF JULY 1, 1964. ***ENGEL, RANDY*** 39FCC2D0030

COMPLAINT CONCERNING THE FAIRNESS DOCTRINE FOR PERSONAL ATTACK DISMISSED SINCE THE STATEMENTS DID NOT ATTACK OR OTHERWISE IMPUGN ONES HONESTY, CHARACTER OR INTEGRITY AND TIME WAS OFFERED AND GRANTED TO PRESENT CONTRASTING VIEWS. SEC. 326 . ***KASKASKIA JUNIOR COLLEGE*** 39FCC2D0566

COMPLAINT CONCERNING THE FAIRNESS DOCTRINE REQUIREMENT TO PRESENT CONTRASTING VIEWS DISMISSED SINCE THE LICENSEES JUDGMENT DOES NOT APPEAR UNREASONABLE AND ONE NEED ONLY AFFORD REASONABLE OPPORTUNITY. NOT EQUAL TIME. ***TEXAS COMM. ON NATURAL RESOURCES*** 39FCC2D0569

FAIRNESS DOCTRINE COMPLAINT ALLEGING A MONTHLY SERIES OF BROADCASTS BY A U.S SENATOR, WHICH DEALT WITH ONLY ONE SIDE OF A CONTROVERSIAL ISSUE, DISMISSED SINCE SPECIFIC FACTS AS TO FAILURE TO PRESENT CONTRASTING VIEWS HAVE NOT BEEN RAISED. ***WOLF, RICHARD*** 39FCC2D1023

FAIRNESS DOCTRINE CONTRASTING VIEWPOINT STATION CHARGE

COMPLAINT ALLEGING FAILURE TO COMPLY WITH FAIRNESS DOCTRINE REQUIREMENTS CONCERNING PRESENTATION OF CONTRASTING VIEWS DISMISSED SINCE A STATION NEED NOT GRANT EQUAL TIME TO PAID ADVERTISING ON A CONTROVERSIAL ISSUE BUT ONLY AFFORD REASONABLE OPPORTUNITIES TO RESPOND. ***UTILITY CONSUMERS COUN. OF MO.*** 39FCC2D0449

FAIRNESS DOCTRINE CONTROVERSIAL ISSUE

REQUEST TO FIND NBC AND AFFILIATED STATIONS VIOLATION OF THEFAIRNESS DOCTRINE, ALLEGING RECNET PROGRAM ON CHINATOWN GIVES WHOLLY NEGATUVE AND PREJUDICIAL VIEWS OF THE CHINESE COMMUNITY, DENIED SINCE NO CONTROVERSIAL ISSUE IS PRESENT AS BROADCAST DID NOT CONDEMN A GROUP OF PEOPLE BUT DEPLORED THEIR LIVING CONDITIONS. ***ACCURACY IN MEDIA, INC.*** 39FCC2D1011

COMPLAINT CONCERNING LICENSEES EDITORIAL REGARDING LOCATING OF STATE REHABILITATION CENTER DISMISSED. SINCE NO EVIDENCE OF FAILURE TO PRESENT CONTRASTING VIEWS WAS OFFERED. ***FULLER, F. G.*** 39FCC2D1013

FAIRNESS DOCTRINE COMPLAINT AGAINST LICENSEE ALLEGING UNFAIRCOVERAGE OF ELECTION NEWS FOUND UNSUBSTANTIATED SINCE ELECTION OF UNION REPRESENTATIVE WAS NOT A CONTROVERSIAL ISSUE WITHIN LICENSEES LISTENING AREA ***PERSONAL ATTACK RULING*** 39FCC2D1059

FAIRNESS DOCTRINE CONTROVERSIAL ISSUE

COMPLAINT CONCERNING EQUAL TIME TO PRESENT VIEWS REGARDING PROFESSIONAL FOOTBALL PLAYERS PENSION RIGHTS DISMISSED FOR FAILURE TO RAISE A CONTROVERSIAL ISSUE OF PUBLIC IMPORTANCE. SINCE HERE THE PUBLIC IS NOT CALLED UPON TO MAKE A DECISION OR CHOICE. ***NATL. FOOTBALL LEAG. PLAYERS ASSN.*** 39FCC2D0429

FAIRNESS DOCTRINE CONTROVERSIAL ISSUE PRODUCT ADVERTISEMENT

PROPOSAL THAT PROCEEDINGS BE DISCONTINUED IS ADOPTED AND THEPROCEEDING CONCERNING VIEWS ON PRODUCT ADVERTISEMENTS ARISING OUT OF A COURT REMAND INVOLVING ADVERTISEMENT OF HIGH POWERED CARS IS SETTLED BY AGREEMENT ***FRIENDS OF THE EARTH*** 39FCC2D0564

FAIRNESS DOCTRINE CONTROVERSIAL ISSUE PRODUCT ADVERTISING

COMPLAINT ALLEGING FAILURE TO COMPLY WITH FAIRNESS DOCTRINE REQUIREMENTS CONCERNING PRESENTATION OF CONTRASTING VIEWS DISMISSED SINCE A STATION NEED NOT GRANT EQUAL TIME TO PAID ADVERTISING ON A CONTROVERSIAL ISSUE BUT ONLY AFFORD REASONABLE OPPORTUNITIES TO RESPOND ***UTILITY CONSUMERS COUN. OF MO.*** 39FCC2D0449

FAIRNESS DOCTRINE EDITORIALIZING BY LICENSEE

FAIRNESS DOCTRINE COMPLAINT DISMISSED SINCE LICENSEE OFFEREDRESPONSE TIME TO EDITORIAL WHICH WAS DECLINED ***MALS, LEO*** 39FCC2D1015

FAIRNESS DOCTRINE LICENSEE DISCRETION AREA OF

COMPLAINT CONCERNING THE FAIRNESS DOCTRINE REQUIREMENT TO PRESENT CONTRASTING VIEWS DISMISSED SINCE A REFUSAL TO PRESENT A SPECIFIC PROGRAM IN OPPOSITION IS NOT UNREASONABLE AND NO FACTS WERE PROVIDED TO INDICATE THAT REASONABLE OPPORTUNITY WAS NOT PROVIDED IN THE OVERALL PROGRAMMING ***VOTERS ORGANIZED THINK ENVIRONMENT*** 39FCC2D0571

FAIRNESS DOCTRINE NETWORK RESPONSIBILITY

APPLICATION FOR REVIEW OF DECISION. RULING FAIRNESS DOCTRINEINAPPLICABLE TO MOUNTAIN SPORTS NETOWRK DENIED SINCE THE NETOWRK PROGRAMMING IS SPECIALIZED AND SEASONAL WITH NO REGULAR NEWS OR COMMENTARY PROGRAMS AND SEC 315 OBLIGATIONS APPLY ONLY TO INDIVIDUAL STATION LICENSEES, NOT NETWORKS. ***APPALACHIAN RESEARCH & DEFENSE FUND*** 39FCC2D0708

FAIRNESS DOCTRINE OVERALL PERFORMANCE STANDARD

COMPLIANT ALLEGING FAILURE TO PRESENT OPPOSING VIEWS TO CRITICS OF THE PRESIDENTS POLICY IN VIETNAM. IN VIOLATION OF 396 (G)(1)(A). DISMISSED SINCE COMPLAINT FAILS TO DISCLOSE GROUNDS FOR CONCLUDING THAT REASONABLE OPPORTUNITY HAS NOT BEEN AFFORDED IN OVERALL PROGRAMMING. ***ACCURACY IN MEDIA, INC.*** 39FCC2D0558

FAIRNESS DOCTRINE PERSONAL ATTACK DEFINITION

COMPLAINT CONCERNING THE FAIRNESS DOCTRINE FOR PERSONAL ATTACK DISMISSED SINCE THE STATEMENTS DID NOT ATTACK OR OTHERWISE IMPUGN ONES HONESTY CHARACTER OR INTEGRITY AND TIME WAS OFFERED AND GRANTED TO PRESENT CONTRASTING VIEWS. SEC 326. ***KASKASKIA JUNIOR COLLEGE*** 39FCC2D0566

FAIRNESS DOCTRINE PERSONAL ATTACK FURNISHING SUBSTANCE OF

COMPLIANCE CONCERNING 315 POLITICAL BROADCASTS DISMISSED SINCE EQUAL TIME IS NOT REQUIRED TO A BONA FIDE NEWSCAST OF A CANDIDATE. AND NO EVIDENCE REGARDING A PERSONAL ATTACK ON HONESTY. CHARACTER OR INTEGRITY HAS BEEN PROVIDED. AND 73 123(C) ONLY REQUIRES AN OPPORTUNITY TO RESPOND TO AN AUTHORIZED EDITORIAL OF ENDORSEMENT. ***RIHERD, MRS. CARMEN C.*** 39FCC2D0617

FAIRNESS DOCTRINE PERSONAL ATTACK OPPORTUNITY FOR RESPONSE

COMPLAINT ALLEGING FAILURE TO COMPLY WITH FAIRNESS DOCTRINE CONCERNING A PERSONAL ATTACK ON A PUBLIC OFFICIAL IN A POLITICAL EDITORIAL DISMISSED. SINCE THE STATION COMPLIED WITH ALL SECTION 73.123(A) REQUIREMENTS AND IT IS NOT THE COMMISSIONS RESPONSIBILITY TO DETERMINE THE TRUTH OR FALSITY OF A BROADCAST. ***SNYDER, ARTHUR K.*** 39FCC2D0446

FAIRNESS DOCTRINE PERSONAL ATTACK, NEWSCAST

FAIRNESS DOCTRINE COMPLAINT BY NEWSPAPER PUBLISHER. ALLEGINGANTI-COMPETITIVE BROADCASTING BY COMPETING NEWSPAPER PUBLISHER WITH BROADCAST MEDIA. DISMISSED SINCE THE BROADCASTS DO NOT APPEAR TO HAVE SUBORDINATED THE PUBLIC INTEREST TO THE BROADCASTERS PRIVATE INTERESTS. AND THE COMMISSION CANNOT REVIEW NEWS JUDGMENTS. ***SUN NEWSPAPERS, INC.*** 39FCC2D1025

APPLICATION FOR REVIEW OF REVIEW BOARD DECISION IN FAIRNESS COMPLAINT AGAINST NBC DENIED. SINCE OFFENDING COMMENT WAS ONLY A PASSING REFERENCE IN A NEWS PROGRAM. ***LANE, GARY*** 39FCC2D0938

FAIRNESS DOCTRINE PRESENTATION OF POINT OF VIEW

COMPLAINT UNDER SEC. 396(G)(1)(A), REQUESTING THE PRESENTATION OF OPPOSING VIEWPOINTS TO BLANCE THE STATIONS PRESENTATIONS. DISMISSED SINCE THE FAIRNESS DOCTRINE DOES NOT REQUIRE A RESPONSE TO AN INDIVIDUAL SPEECH OR PRESENTATION, BUT ONLY A REASONABLE OPPORTUNITY OVER A REASONABLE PERIOD OF TIME. ***ACCURACY IN MEDIA, INC.*** 39FCC2D0416

COMPLAINTS ALLEGING FAILURE TO PRESENT VIEWS CONTRARY TO ANTI-MINING AND BOMBING NORTH VIETNAM PROGRAM DENIED SINCE OPPOSING VIEWS HAD BEEN BROADCAST. COMPLAINT REGARDING FAILURE TO PROVIDE EQUAL TIME UNDER SECS. 315, 312(A)(7), AND ENDORSEMENT OF CANDIDATE UNDER SEC. 399. DISMISSED SINCE UNSUPPORTED. ***ROWLEY, HORACE P.*** 39FCC2D0437

COMPLAINT CONCERNING THE FAIRNESS DOCTRINE DISMISSED FOR FAILURE TO PROVIDE SUFFICIENT INFORMATION THAT A STATION HAD FAILED TO AFFORD REASONABLE OPPORTUNITY FOR THE PRESENTATION OF CONTRASTING VIEWS. ***MINHINNETTE, MRS. V. E.*** 39FCC2D0427

REQUEST TO FIND NBC AND AFFILIATED STATIONS VIOLATION OF THEFAIRNESS DOCTRINE. ALLEGING RECNET PROGRAM ON CHINATOWN GIVES WHOLLY NEGATUVE AND PREJUDICIAL VIEWS OF THE CHINESE COMMUNITY. DENIED SINCE NO CONTROVERSIAL ISSUE IS PRESENT AS BROADCAST DID NOT CONDEMN A GROUP OF PEOPLE BUT DEPLORED THEIR LIVING CONDITIONS. ***ACCURACY IN MEDIA, INC.*** 39FCC2D1011

APPLICATION FOR REVIEW OF ACTION ON COMPLAINT AGAINST STATION ALLEGING ONE-SIDED NEWS COVERAGE OF EVENTS IN THE INDOCHINA WAR DENIED. SINCE THE CIMMISSION CANNOT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE LICENSEE AS TO NEWS PRESENTATION IN THE ABSENCE OF SLANTING. ***COOPER, KENNETH M.*** 39FCC2D1000

FAIRNESS DOCTRINE TIME FOR RESPONSE

REFUSAL TO ACCEPT ADVERTISING OR RESPONSE TO BROADCAST. AFTER COSE OF BUSINESS, HELD TO BE A VIOLATION OF THE FAIRNESS DOCTRINE WHERE BROADCAST OF UNION ELECTION BY OPPOSING SIDE WAS AIRED THE NIGHT BEFORE THE ELECTION LICENSEE IMPROPERLY HANDLED CONTROVERSIAL ISSUE OF PUBLIC IMPORTANCE ESPECIALLY WHEN TIME WAS OF THE ESSENCE. ***NATL. ASSN. OF GOVT. EMPLOYEES*** 39FCC2D1019

FAIRNESS DOCTRINE, BIASED VIEWPOINT

COMPLAINT THAT NETWORKS SELECTED OUT SHOOTING SPORT EVENTS IN ITS OLYMPIC GAMES PROGRAMMING IN FURTHERANCE OF ITS GUN CONTROL POLICY. DISMISSED SINCE THE COMMISSION CANNOT CENSOR PROGRAMMING AND THERE IS PRESENTED NO EVIDENCE OF FAILURE TO PERMIT CONTRASTING VIEWS. ***PLATT, STEPHEN J.*** 39FCC2D0433

FAIRNESS DOCTRINE, REASONABLE TIME FOR OPPOSING VIEWS

FAIRNESS DOCTRINE COMPLAINT AGAINST 2 STATIONS ALLEGING INADEQUATE COVERAGE OF CONTRASTING VIEWPOINTS RE STRIP MINING FOUND TO BE UNJUSTIFIED. SINCE BOTH LICENSEES HAVE GIVEN REASONABLE TIME TO EACH SIDE IN COVERAGE OF THE CONTROVERSIAL ISSUE OVER THE LAST YEAR. ***NATIONAL AUDUBON SOCIETY*** 39FCC2D1021

FAIRNESS DOCTRINE, SUFFICIENCY OF ALLEGATIONS

COMPLAINT FOR FAILURE TO PRESENT OPPOSING VIEWS ON AIRLINE HIJACKING, NEWS TREATMENT, AND DRUGS, DISMISSED SINCE DETAILED AND SPECIFIC EVIDENCE OF FAILURE TO COMPLY WITH THE FAIRNESS DOCTRINE HAS NOT BEEN SUBMITTED. ***MARTIN-TRIGONA, ANTHONY R.*** 39FCC2D0025

FAIRNESS DOCTRINE COMPLAINT AGAINST TELEVISION INFORMATION OFFICE SPOT ANNOUNCEMENT RE BENEFITS OF CHILDRENS TV DENIED SINCE COMPLAINANT FAILED TO RAISE EXAMPLES OF LICENSEES FAILURE TO COMPLY WITH FAIRNESS DOCTRINE. ***ACTION FOR CHILDRENS TV, INC.*** 39FCC2D0702

COMPLAINT THAT NETWORKS SELECTED OUT SHOOTING SPORT EVENTS IN ITS OLYMPIC GAMES PROGRAMMING IN FURTHERANCE OF ITS GUN CONTROL POLICY. DISMISSED SINCE THE COMMISSION CANNOT CENSOR PROGRAMMING AND THERE IS PRESENTED NO EVIDENCE OF FAILURE TO PERMIT CONTRASTING VIEWS. ***PLATT, STEPHEN J.*** 39FCC2D0433

FAIRNESS DOCTRINE, TRUTH OR FALSITY OF BROADCAST

COMPLAINT ALLEGING FAILURE TO COMPLY WITH FAIRNESS DOCTRINE CONCERNING A PERSONAL ATTACK ON A PUBLIC OFFICIAL IN A POLITICAL EDITORIAL DISMISSED. SINCE THE STATION COMPLIED WITH ALL SECTION 73.123(A) REQUIREMENTS AND IT IS NOT THE COMMISSIONS RESPONSIBILITY TO DETERMINE THE TRUTH OR FALSITY OF A BROADCAST. ***SNYDER, ARTHUR K.*** 39FCC2D0446

FAIRNESS DOCTRINE COMPLAINT BY NEWSPAPER PUBLISHER, ALLEGINGANTI-COMPETITIVE BROADCASTING BY COMPETING NEWSPAPER PUBLISHER WITH BROADCAST MEDIA, DISMISSED SINCE THE BROADCASTS DO NOT APPEAR TO HAVE SUBORDINATED THE PUBLIC INTEREST TO THE BROADCASTERS PRIVATE INTERESTS, AND THE COMMISSION CANNOT REVIEW NEWS JUDGMENTS. ***SUN NEWSPAPERS, INC.*** 39FCC2D1025

FALSE STATEMENTS

PETITION TO ENLARGE ISSUES TO DETERMINE IF AN APPLICANT KNOWINGLY SOLICITED A FALSE AND MISLEADING STATEMENT AND THE EFFECT THEREOF ON HIS BASIC AND/OR COMPARATIVE QUALIFICATIONS IS GRANTED SINCE THERE ARE BOTH CONFLICTS IN AFFIDAVITS AND UNDISPUTED FACTS WHICH WARRANT AN EVIDENTIARY HEARING. ***WIOO, INC.*** 39FCC2D0351

FEE GRANT

WAIVER OF OPERATOR PERMIT REPLACEMENT FEE GRANTED. ***STARK, SANDRA*** 39FCC2D0100

FEE ISSUANCE

PART 1 AMENDED TO PROVIDE FOR PREPAYMENT OF COMBINED FILING AND GRANT FEE WITH AN APPLICATION FOR CERTIFICATION OR TYPE ACCEPTANCE. ***SCHEDULE OF FEES*** 39FCC2D0956

FEE SCHEDULE

PETITION FOR COMMISSION DETERMINATION THAT NO FILING OR GRANT FEE BE APPLICABLE TO THE LAUNCH OF INTELSAT IV F-3 SATELLITE BECAUSE THE GRANT OF CONSTRUCTION AUTHORITY WAS MADE PRIOR TO THE ADOPTION OF THE FEE SCHEDULE DENIED SINCE THE FEE ATTACHES WHEN LAUNCHED AND OPERATIONAL; SEC. 1.1113 DISCUSSED. ***COMMUNICATIONS SATELLITE CORP.*** 39FCC2D0549

FIELD DISTURBANCE SENSOR

SEC. 15.309(B) AMENDED TO FURTHER SUPPRESS SPURIOUS EMISSIONS FROM SENSORS OPERATING 915, 2450 AND 5800 MHZ BANDS. REQUEST FOR WAIVER OF AMENDED RULE DENIED. ***FIELD DISTRUBANCE SENSORS*** 39FCC2D0713

FILING

APPLICATION FOR CERTIFICATE OF COMPLIANCE TO BEGIN CABLE TV SERVICE GRANTED. SINCE COMPLIANCE WITH FORMER SEC. 74.1105 (A) (TIME FOR FILING) RUNS FROM THE DATE NOTICE WAS FILED. WITH THE COMMISSION, THUS ESTABLISHING A GRANDFATHERED AUTHORIZATION. ***GREATER LAWRENCE COMM. ANTENNA, INC.*** 39FCC2D0935

FILING, EXTENSION OF TIME FOR

REQUEST FOR EXTENSTION OF TIME IN WHICH TO FILE PETITION TO DENY IN TRANSFER OF CONTROL PROCEEDING, GRANTED SINCE TRANSFER APPLICATION WAS INCOMPLETE AS FILED, THEREBY PREVENTING FULL REVIEW UNTIL CORRECTIVE AMENDMENT WAS FILED. ***GILBERT, LEE, J. L. & K. E. PUTBRESE*** 39FCC2D1043

FINANCIAL ASSISTANCE

PETITION TO ENLARGE ISSUES IN MUTUALLY EXCLUSIVE PROCEEDING GRANTED AS TO REQUESTED ISSUES OF LAND LEASE PRICE AND POSSIBLE MISREPRESENTATION, AND DENIED AS TO PROPOSED LOAN BY INDIVIDUAL. ***W100, INC.*** 39FCC2D0856

FINANCIAL DATA

PETITION TO ENLARGE ISSUES TO INCLUDE COST ESTIMATE AND COMPARATIVE PROGRAMMING ISSUES DENIED SINCE PETITIONER HAS FAILED TO MAKE A THRESHOLD SHOWING THAT THERE ARE SIGNIFICANT DIFFERENCES IN PROGRAMMING PROPOSALS. ***EASTERN B/CING CO.*** 39FCC2D0700

FINANCIAL QUALIFICATIONS

MOTION TO ENLARGE ISSUES IN PROCEEDING INVOLVING RENEWAL ANDNEW APPLICANTS GRANTED AS TO REQUESTED NETWORK AFFILIATION AND FINANCIAL QUALIFICATIONS ISSUES AND DENIED AS TO REPORTING CRIMINAL VIOLATIONS, TRANSMITTER SUITABILITY, EQUAL EMPLOYMENT, PUBLIC INSPECTION, INEPTNESS, SEC. 1.514, AND 1.53(B) ISSUES. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1077

FINANCIAL REPORTS

PETITION FOR RECONSIDERATION OF ORDER FOR INSPECTION OF ANNUAL FINANCIAL REPORTS DENIED, SINCE PLEADING PREVIOUSLY OVERLOOKED CONTAINS NO NEW PERSUASIVE EVIDENCE AND RECORDS ARE NECESSARY FOR PREPARATION OR PETITION TO DENY. ***CITIZENS COMMUNICATIONS CENTER*** 39FCC2D0876

FM BROADCAST STATION, CLASS A

APPLICATION FOR NEW FM STATION GRANTED SUBJECT TO WHATEVER ACTION IS TAKEN IN PROCEEDING INVOLVING OUTSTANDING COMPLAINTS AGAINST ANOTHER STATION IN WHICH ONE OF THE PRINCIPALS HAS AN INTEREST. ***SUMTER B/CING CO., INC.*** 39FCC2D0518

FOREIGN LANGUAGE BROADCASTS

REQUEST FOR DECLARATORY RULING (33FCC2D606) RE FOREIGN LANGUAGE BROADCASTING GRANTED TO THE EXTEND THAT THE DUTY TO AND POSSIBLE METHODS OF SUPERVISING FOREIGN LANGUAGE BROADCASTS ARE CLARIFIED, ALTHOUGH RESPONSIBILITY FOR DETERMINATION AND APPLICATION OF APPROPRIATE PROCEDURE AND ITS EFFECTIVENESS RESTS WITH THE LICENSEE. ***FOREIGN LANGUAGE PROGRAMS*** 39FCC2D1037

FOREIGN TELEVISION STATION

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE TO CARRY A FOREIGN SIGNAL GRANTED SINCE THE OBJECTING STATION IS NOT LOCAL AND HAS NO RIGHT TO CARRIAGE, AND IMPORTATION OF FOREIGN LANGAUGE PROGRAMMING IS IN THE PUBLIC INTEREST. ***MICKELSON MEDIA, INC.*** 39FCC2D0602

FORFEITURE

FORFEITURE FOR VIOLATING OF SEC. 73.112(A)(2)(II), (LOGGING THE DURATION OF COMMERCIALS), AND SECS. 73.119 AND 317 FOR FAILURE TO GIVE THE REQUIRED SPONSOR IDENTIFICATION SINCE THE VIOLATIONS ARE REPORTED. ***GROSSCO, INC.*** 39FCC2D0589

FORFEITURE OF 800 ORDERED FOR REPEATED VIOLATIONS OF SEC. 73.87 (OPERATION FROM 6 A.M. WITH NONDIRECTIONAL DAYTIME MODE AND POWER, PRIOR TO THE SUNRISE TIMES SPECIFIED IN LICENSE) AND SEC. 73.111(A) (FAILURE TO KEEP MAINTENACE LOGS). ***HEART OF THE BLACK HILLS STATION*** 39FCC2D1045

FORFEITURE OF 3,000 ORDERED FOR REPEATED VIOLATIONS OF SEC 317 AND SEC. 73.119 SPONSORSHIP IDENTIFICATION OF COMMERCIAL ANNOUNCEMENTS . ***METRO COMMUNICATIONS, INC.*** 39FCC2D1053

FORFEITURE AMOUNTS

REQUEST FOR REDUCTION OF FORFEITURE AMOUNT IMPOSED FOR VIOLATION OF PROVISIONS OF STATION AUTHORIZATION, SECTIONS 73.67(A)(6), 73.93(E), 73.111(A) AND 301 DENIED SINCE THE FORFEITURE PROVISIONS ARE PUNITIVE NOT EDUCATIONAL AS PROPOSED, AND A LICENSEE IS RESPONSIBLE FOR ITS EMPLOYEES ACTION. ***WEST JERSEY B/CING CO.*** 39FCC2D0540

FORMS FILING OF

APPLICATIONS REQUESTING AUTHORITY TO OPERATE STATION ACCEPTED FOR FILING SINCE IN CONFORMITY WITH COMMISSION RULES, EXCEPT FOR ONE WHICH IS ACCEPTED ON CONDITION THAT WITHIN 30 DAYS IT SHALL BE AMENDED TO INCLUDE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM ON SECTION VI OF FCC FORM 301 IN ACCORDANCE WITH REQUIREMENTS OF SEC. 73.125(C). 73.125 C . ***W.M.E.D. ASSOCIATES, INC.*** 39FCC2D0292

FRANCHISE CATV

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCEIN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31. ***MORGAN COUNTY TELE-CABLE, INC.*** 39FCC2D0605

FRAUD IN OBTAINING LICENSE

SEC. 13.70 AMENDED TO INCLUDE PROHIBITION OF ALTERATION OR DUPLICATION OF A COMMERCIAL RADIO OPERATORS LICENSE AS WELL AS THE OBTAINING OF SAME BY FRAUDULENT MEANS. ***COMMERCIAL RADIO OPERATORS*** 39FCC2D0695

FREEZE, AM

PART 73 OF THE RULES AMENDED REGARDING AM STATION ASSIGNMENTSTANDARDS AND THE RELATIONSHIP BETWEEN THE AM AND FM BROADCAST SERVICES. ***B/CST STATION ASSIGNMENT STANDARDS*** 39FCC2D0645

FREQUENCY ASSIGNMENT

PETITION FOR NOTICE OF PROPOSED RULE MAKING TO AMEND PARTS 8, 9, 91, AND 93 RELATING TO USE OF FREQUENCY PAIR AND AMENDING SECTION 91.504 TO ALLOW ITINERANT FIXED OPERATIONS GRANTED ***FREQUENCY PAIR 451.800456.800 MHZ*** 39FCC2D0152

GENEVA RADIO REGULATIONS

PART 2 TABLE OF FREQUENCY ALLOCATIONS AMENDED TO CONFORM TO A PRACTICABLE EXTENT TO THE GENEVA RADIO REGULATIONS. AS REVISED BY THE SPACE WARC ***SPACE WARC, AMEND. OF PART 2*** 39FCC2D0959

GRAND FATHERING

APPLICATIONS FOR PERMITS IN THE CABLE TELEVISION RELAY SERVICE TO ALLOW A CABLE SYSTEM TO UTILIZE ITS OWN FACILITIES RATHER THAN THOSE OF A MICROWAVE COMMON CARRIER GRANTED SINCE ALLEGATIONS OF MISCONDUCT DO NOT PERTAIN TO THE APPLICANT AND THE SIGNALS INVOLVED WERE BEING CARRIED ON A SWITCHED BASIS PRIOR TO MARCH 31, 1972. ***SATELLITE SYSTEMS CORP.*** 39FCC2D0614

GRANT CONDITIONS ON

APPLICATION FOR NEW FM STATION GRANTED SUBJECT TO WHATEVER ACTION IS TAKEN IN PROCEEDING INVOLVING OUTSTANDING COMPLAINTS AGAINST ANOTHER STATION IN WHICH ONE OF THE PRINCIPALS HAS AN INTEREST. ***SUMTER B/CING CO., INC.*** 39FCC2D0518

APPLICATIONS FOR ASSIGNMENT OF LICENSES GRANTED SUBJECT TO THE OUTCOME OF AN INVESTIGATION INTO POSSIBLE LICENSEE MISCONDUCT AND ELIMINATION OF A CROSS-INTEREST CONFLICT. ***TWIN STATES B/CING CO.*** 39FCC2D0835

GRANT FEE

CERTIFICATION FOR A LAND MOBILE COMMUNICATIONS RECEIVER IS RESCINDED IN ACCORDANCE WITH 1.1120 AND 1.1102 FOR FAILURE TO PAY GRANT FEE IN DESIGNATED TIME. ***SONA LABS, INC.*** 39FCC2D0511

PETITION FOR COMMISSION DETERMINATION THAT NO FILING OR GRANT FEE BE APPLICABLE TO THE LAUNCH OF INTELSAT IV F-3 SATELLITE BECAUSE THE GRANT OF CONSTRUCTION AUTHORITY WAS MADE PRIOR TO THE ADOPTION OF THE FEE SCHEDULE DENIED SINCE THE FEE ATTACHES WHEN LAUNCHED AND OPERATIONAL SEC. 1.1113 DISCUSSED. ***COMMUNICATIONS SATELLITE CORP.*** 39FCC2D0549

GRANT PARTIAL

PETITION FOR STAY AND FOR RECONSIDERATION OF A PARTIAL GRANTOF AN APPLICATION TO CONSOLIDATE 22 PUBLIC BRANCH OFFICES INTO A SINGLE PUBLIC MESSAGE CENTER, DISMISSED FOR FAILURE TO RAISE ADDITIONAL FACTS AND SINCE EACH APPLICATION FOR CONSOLIDATION WILL BE EXAMINED ON AN INDIVIDUAL BASIS. ***WESTERN UNION TEL. CO.*** 39FCC2D0290

IMPOUNDMENT OF PROFITS

ORDER FOR IMPOUNDMENT OF PROFITS, AFTER CAUSE REMANDED BY COURT OF APPEALS, IN CONNECTION WITH DENIAL OF STATION LICENSE WHERE THE LICENSEE CONTINUED OPERATION PENDING AWARDING OF NEW LICENSE. NET PROFITS FROM 9/8/70 TO 4/17/71 TO BE PAID IN TRUST FOR BENEFIT OF NONPROFIT EDUCATIONAL BROADCASTING INTERESTS IN MISSISSIPPI. ***IMPOUNDMENT OF PROFITS*** 39FCC2D0462

INDEPENDENT STATION

APPLICATION FOR CERTIFICATE OF COMPLIANCE TO ADD ON INDEPENDENT CANDIAN SIGNAL TO A CABLE TELEVISION SYSTEM PURSUANT TO SEC. 76.59 DENIED, SINCE THE STATION PROPOSED IS NOT INDEPENDENT AS DEFINE BY 76.5(N) IN THAT IT CARRIES OVER 10 HOURS OF MAJOR NETWORK PROGRAMMING DURING PRIME TIME. ***KING VIDEOCABLE CO.*** 39FCC2D0600

INFORMATION FILING OF

FAILURE TO COMPLY WITH SEC. 1.65 OF THE RULES BY NOT AMENDING APPLICATION TO REFLECT INTERESTS OF PRINCIPALS, HELD TO BE AN INADVERTENT OMISSION AND HENCE NOT DISQUALIFYING. ***SOUTHLAND, INC.*** 39FCC2D0270

PETITION TO ENLARGE ISSUES GRANTED TO INCLUDE SEC. 1.65 AND BASIC QUALIFICATIONS ISSUES SINCE CHANGES IN BROADCAST AND OTHER BUSINESS INTERESTS WERE REPORTED LATE. ***SOUTHERN B/CST CO.*** 39FCC2D0268

INITIAL DECISION, SET ASIDE

APPLICATION FOR NEW AM STATION GRANTED AFTER REMAND AND SUPPLEMENTAL INITIAL DECISION ON ISSUES AS TO PRINCIPALS ALLEGED VIOLATIONS OF AFTER HOURS OPERATIONS, SINCE VIOLATIONS WERE DUE TO INADVERTANCE AND INEXPERIENCE. ***DUPAGE COUNTY B/CING, INC.*** 39FCC2D0885

INTELSAT

REQUEST FOR THE INSPECTION OF SUMMARY RECORD OF THE 62ND MEETING OF ICS, CONCERNING THE INTELSAT IV SATELLITE SERIES, GRANTED IN PART PURSUANT TO THE REVIEW REQUIREMENTS OF 0.461 (D)(2), BUT REQUEST FOR DELAY OF FURTHER COMMISSION ACTION ON THE SERIES DENIED DUE TO THE IMMEDIATE NEED FOR ACTION AND TIMING OF THE REQUEST. ***ITT WORLD COMM., INC.*** 39FCC2D0593

INTERCONNECTION

INVESTIGATION INSTITUTED INTO THE POSSIBLE ESTABLISHMENT OF AN INTERCONNECTION BETWEEN RCA GLOBAL COMMUNICATIONS TELEGRAPH MESSAGE AND TELEX SYSTEM ON GUAM AND ITT WORLD COMMUNICATIONS TELEGRAPH MESSAGE AND TELEX SYSTEM. ***ITT WORLD COMMUNICATIONS, INC.*** 39FCC2D0778

INTERIM OPERATION

MOTION FOR STAY OF MEMORANDUM OPINION AND ORDER DENYING REQUEST FOR JOINT INTERIM AUTHORITY TO OPERATE STATION FACILITIES PENDING COMPARATIVE HEARING GRANTED IN PART TO ALLOW APPEAL TO D. C. CIRCUIT COURT OF APPEALS. ***NORTHEAST OKLA. B/CING, INC.*** 39FCC2D0484

ORDER FOR IMPOUNDMENT OF PROFITS, AFTER CAUSE REMANDED BY COURT OF APPEALS, IN CONNECTION WITH DENIAL OF STATION LICENSE WHERE THE LICENSEE CONTINUED OPERATION PENDING AWARDING OF NEW LICENSE. NET PROFITS FROM 9/8/70 TO 4/17/71 TO BE PAID IN TRUST FOR BENEFIT OF NONPROFIT EDUCATIONAL BROADCASTING INTERESTS IN MISSISSIPPI. ***IMPOUNDMENT OF PROFITS*** 39FCC2D0462

INTERLOCUTORY RULING

REQUESTED WAIVER OF SEC. 1.106(A), DISALLOWING RECONSIDERATION OF INTERLOCULATORY RULINGS BY THE REVIEW BOARD, DENIED SINCE NO JUSTIFICATION FOR THE WAIVER HAS BEEN PRESENTED. ***SALEM B/CING CO., INC.*** 39FCC2D0178

INTERPRETIVE RULING

INTERPRETIVE RULING THAT UNDER SECTION 76.59 (D)(2) CABLE SYSTEMS MAY NOT IMPORT A DISTANT NETWORK TELEVISION STATION NOT NORMALLY CARRIED ON THE SYSTEM, BROADCASTING A BLACKED OUT SPORTS PROGRAM. ***SCRIPPS-HOWARD B/CING CO.*** 39FCC2D0502

INVESTIGATION

PETITION FOR RECONSIDERATION OF THE LAWFULNESS OF TARIFF RATES CHARGED (35 FCC 2D 907) IS DENIED. SINCE NO NEW FACTS ARE PRESENTED AND AN INVESTIGATION AND HEARING HAVE BEEN ORDERED. ***CRUCES CABLE CO., INC.*** 39FCC2D0554

PETITIONS FOR SUSPENSION AND INVESTIGATION AND FOR REJECTIONOR SUSPENSION IN MATTER OF REVISION OF TARIFF FCC NO. 240 AND TWX TARIFF FCC NO. 258 GRANTED TO THE EXTENT THAT AN INVESTIGATION IS ORDERED INTO THE LAWFULNESS OF THE TARIFFS, AND THEY ARE SUSPENDED PENDING THAT DECISION. ***WESTERN UNION TELEGRAPH CO.*** 39FCC2D0977

INVESTIGATION, BY FCC

INVESTIGATION INSTITUTED INTO THE POSSIBLE ESTABLISHMENT OF AN INTERCONNECTION BETWEEN RCA GLOBAL COMMUNICATIONS TELEGRAPH MESSAGE AND TELEX SYSTEM ON GUAM AND ITT WORLD COMMUNICATIONS TELEGRAPH MESSAGE AND TELEX SYSTEM. ***ITT WORLD COMMUNICATIONS, INC.*** 39FCC2D0778

APPLICATIONS FOR ASSIGNMENT OF LICENSES GRANTED SUBJECT TO THE OUTCOME OF AN INVESTIGATION INTO POSSIBLE LICENSEE MISCONDUCT AND ELIMINATION OF A CROSS-INTEREST CONFLICT. ***TWIN STATES B/CING CO.*** 39FCC2D0835

ISSUE SIMILAR

JOINT PETITION FOR ENLARGEMENT OF ISSUES TO INCLUDE AN ISSUEOF WHETHER PROPOSEF TARIFF RATE CHANGES ARE CONSISTENT WITH PRICE COMMISSION GUIDELINES DENIED, SINCE THE ISSUES AS ORIGINALLY STARTED WILL COVER THIS AND THE MOTION WAS PRECEDURALLY DEFICIENT, LACKING AFFIDAVIT (SEC. 1.229(C)). ***AMERICAN TELEVISION RELAY, INC.*** 39FCC2D0545

JOINT VENTURE

APPLICATION FOR A JOINT TALL TOWER FOR VHF STATIONS DENIED IN VIEW OF UHF IMPACT BASED ON A REALISTIC POTENTIAL FOR UHF DEVELOPMENT IN THE AREA BY REASON OF AN ABC NETWORK WHITE AREA. ***SOUTH CAROLINA EDUC. T.V. COMM.*** 39FCC2D0180

RECONSIDERATION OF SOUTH CAROLINA EDUC. T.V. COMM. DECISION,DENYING APPLICATION FOR JOINT TALL TOWER, DENIED (FCC 73- 508) AND APPEAL OF LATTER ORDER PENDING. SOUTH CAROLINA EDUC. T.V. COMM. V. F.C.C. (D.C. CIR. 73-1679). 39FCC2D0180

LAND MOBILE SERVICE

PETITION FOR NOTICE OF PROPOSED RULE MAKING TO AMEND PARTS 8, 9, 91, AND 93 RELATING TO USE OF FREQUENCY PAIR AND AMENDING SECTION 91.504 TO ALLOW ITINERANT FIXED OPERATIONS GRANTED. ***FREQUENCY PAIR 451.800456.800 MHZ*** 39FCC2D0152

CERTIFICATION FOR A LAND MOBILE COMMUNICATIONS RECEIVER IS RESCINDED IN ACCORDANCE WITH 1.1120 AND 1.1102 FOR FAILURE TO PAY GRANT FEE IN DESIGNATED TIME. ***SONA LABS, INC.*** 39FCC2D0511

LEASED PROPERTY

PETITION TO ENLARGE ISSUES IN MUTUALLY EXCLUSIVE PROCEEDING GRANTED AS TO REQUESTED ISSUES OF LAND LEASE PRICE AND POSSIBLE MISREPRESENTATION, AND DENIED AS TO PROPOSED LOAN BY INDIVIDUAL. ***W100, INC.*** 39FCC2D0856

LICENSE CONDITIONS RELATING TO

PETITION REQUESTING MODIFICATION OF STATION LICENSE BY REMOVAL OF PROGRAM EXCLUSIVITY CONDITION (22 FCC 2D 950) DENIED. SINCE MEASUREMENT DATA SHOWS THAT STRONG SIGNALS WERE AVAILABLE IN THE AREA FROM BOTH THE TRANSLATOR AND THE TELEVISION STATION. ***WGAL TELEVISION, INC.*** 39FCC2D0627

LICENSE MODIFICATION OF

PETITION REQUESTING MODIFICATION OF STATION LICENSE BY REMOVAL OF PROGRAM EXCLUSIVITY CONDITION (22 FCC 2D 950) DENIED, SINCE MEASUREMENT DATA SHOWS THAT STRONG SIGNALS WERE AVAILABLE IN THE AREA FROM BOTH THE TRANSLATOR AND THE TELEVISION STATION. ***WGAL TELEVISION, INC.*** 39FCC2D0627

LICENSE RENEWAL OF

APPLICATION FOR RENEWAL OF LICENSE GRANTED SINCE PETITION TODENY FAILED TO MEET 390(D) REQUIREMENTS OF ALLEGING SPECIFIC ACTS TO ESTABLISH A PRIMA FACIE CASE FOR DENIAL AS TO EQUAL EMPLOYMENT OPPORTUNITIES, COMMUNITY NEEDS AND ACCESS TO PUBLIC FILES (SEC. 1.539). ***AVCO BROADCASTING CORP.*** 39FCC2D0004

AVCO B/CING CORP. DECISION GRANTING RENEWAL OF TV B/C LICENSE AFFIRMED W/O OPINION THE BILINGUAL CULTURAL COALITION ON MASS MEDIA V. FCC (D.C. CIR. 72-2205). ***AVCO BROADCASTING CORP.*** 39FCC2D0004

APPLICATION FOR LICENSE RENEWAL (SEC. 309(D)) GRANTED, SINCETHE PETITION TO DENY FAILED TO ESTABLISH ANY SUBSTANTIAL AND MATERIAL QUESTIONS OF FACT CONCERNING ALLEGED DISCRIMINATORY EMPLOYMENT PRACTICES AND INADEQUATE COMMUNITY SURVEY. ***GREAT TRAILS B/CING CORP.*** 39FCC2D0039

APPLICATION FOR LICENSE RENEWAL GRANTED SINCE THE PETITION TO DENY FAILED TO ESTABLISH MATERIAL QUESTION FACT (SEC. 309 (D)), CONCERNING EMPLOYMENT PRACTICES, PROGRAMMING AVAILABILITY OF PUBLIC FILE AND ASCERTAINMENT OF COMMUNITY PROBLEMS. ***MAHONING VALLEY B/CING CORP.*** 39FCC2D0052

PETITION FOR RECONSIDERATION GRANT OF A LICENSE RENEWAL APPLICATION (30FC-CID958) IS DENIED SINCE PETITIONERS ALLEGATIONS CONCERNING COMMUNITY SURVEY, PROGRAMMING AND EMPLOYMENT AND COMMERCIAL PRACTICES WERE NOT SPECIFIC (SEC. 309(D)). ***WKBN BROADCASTING CORP.*** 39FCC2D0116

COMPLAINT OF EMPLOYMENT DISCRIMINATION DISMISSED AND RENEWALGRANTED SUBJECT TO FURTHER ACTION PENDING OUTCOME OF EMPLOYMENT DISCRIMINATION PROCEEDING BEFORE THE STATE HUMAN RELATIONS COMMISSION. ***PRIME TIME ACCESS RULE*** 39FCC2D0077

RENEWAL OF BROADCAST LICENSES BY STAFF ACTION FOR NORTH AND SOUTH CAROLINA APPROVED. ***NORTH CAR. AND SO. CAR. LICENSE REN.*** 39FCC2D0482

REQUEST TO ENLARGE ISSUES IN RENEWAL HEARING TO INCLUDE A MERITORIOUS PROGRAMMING ISSUE, GRANTED TO THE EXTENT THAT APPLICANT WILL BE ALLOWED TO PRESENT EVIDENCE RE ETHNIC- ORIENTED PHASES OF ITS PAST PROGRAMMING. ***COSMOPOLITAN B/CING CORP.*** 39FCC2D0698

APPLICATION FOR RENEWAL OF LICENSE GRANTED UPON FINDING THATPRINCIPALS OF LICENSEE WERE NOT INVOLVED IN A STRIKE APPLICATION AND THAT MISSTATEMENTS IN TESTIMONY WERE NOT PERJURY BUT A FAULTY SHADING OF RECOLLECTIONS. ***GRENCO, INC.*** 39FCC2D0732

REQUEST FOR EXTENSION OF TIME IN WHICH TO FILE A PETITION TODENY RENEWAL OF LICENSE GRANTED, AND SEC. 1.580(I) WAIVED. ***CITIZENS COMMUNICATIONS CENTER*** 39FCC2D0993

LICENSE SUSPENSION OF

PREVIOUSLY ISSUED ORDER SUSPENDING RADIOTELEPHONE THIRD CLASS OPERATOR PERMIT DISMISSED UPON REQUEST FOR HEARING, AND PROCEEDING TERMINATED AS BEST SERVING THE PUBLIC INTEREST. ***TIPTON, BEN LLOYD, III*** 39FCC2D1073

LICENSEE MISCONDUCT

APPLICATION FOR NEW AM STATION GRANTED AFTER REMAND AND SUPPLEMENTAL INITIAL DECISION ON ISSUES AS TO PRINCIPALS ALLEGED VIOLATIONS OF AFTER HOURS OPERATIONS, SINCE VIOLATIONS WERE DUE TO INADVERTANCE AND INEXPERIENCE. ***DU-PAGE COUNTY B/CING, INC.*** 39FCC2D0885

LICENSEE QUALIFICATIONS

FAILURE TO COMPLY WITH SEC. 1.65 OF THE RULES BY NOT AMENDING APPLICATION TO REFLECT INTERESTS OF PRINCIPALS, HELD TO BE AN INADVERTENT OMISSION AND HENCE NOT DISQUALIFYING. ***SOUTHLAND, INC.*** 39FCC2D0270

LICENSE, ASSIGNMENT OF BY RECEIVER

PETITION TO DENY ASSIGNMENT OF LICENSE BY RECEIVER DENIED SINCE THE COURT WHICH HAS JURISDICTION OF THE RECEIVER HAS APPROVED THE ASSIGNMENT SUBJECT TO COMMISSION APPROVAL, AND PETITIONER, AN UNSUCCESSFUL PROSPECTIVE ASSIGNEE, HAS NO STANDING BEFORE THE COMMISSION. (SEC. 310(B)). ***GORMAN, LEON P., JR. RECEIVER*** 39FCC2D0037

LOAN COMMITMENT, TERMS OF

PETITION TO ENLARGE ISSUES GRANTED TO ADD A MISREPRESENTATION ISSUE SINCE THERE ARE SERIOUS CONFLICTING STATMENTS PRESENTED CONCERNING A LOAN COMMITMENT. ***WIOO, INC.*** 39FCC2D0543

LOCAL GOVERNMENT RADIO SERVICE, FREQUENCY

NOTICE OF PROPOSED RULE MAKING TO AMEND SEC. 89.257 CONCERNING MOBILE COMMUNICATIONS UNITS LICENSED IN THE LOCAL GOVERNMENT RADIO SERVICE TO PERMIT EMERGENCY VEHICLES AND COMMUNICATIONS RELATED TO GOVERNMENTAL FUNCTIONS TO THE USE OF LOCAL GOVERNMENT FREQUENCIES. ***LOCAL GOVT SERVICE MOBILE STATIONS*** 39FCC2D0164

LOGS FALSE

FORFEITURE FOR VIOLATING OF SEC. 73.112(A)(2)(II), (LOGGING THE DURATION OF COMMERCIALS), AND SECS. 73.119 AND 317 FOR FAILURE TO GIVE THE REQUIRED SPONSOR IDENTIFICATION SINCE THE VIOLATIONS ARE REPORTED. ***GROSSCO, INC.*** 39FCC2D0589

LOGS MAINTENANCE OF

FORFEITURE OF 800 ORDERED FOR REPEATED VIOLATIONS OF SEC. 73.87 (OPERATION FROM 6 A.M. WITH NONDIRECTIONAL DAYTIME MODE AND POWER, PRIOR TO THE SUNRISE TIMES SPECIFIED IN LICENSE) AND SEC. 73.111(A) (FAILURE TO KEEP MAINTENACE LOGS). ***HEART OF THE BLACK HILLS STATION*** 39FCC2D1045

LOGS OPERATING

REQUEST FOR REDUCTION OF FORFEITURE AMOUNT IMPOSED FOR VIOLATION OF PROVISIONS OF STATION AUTHORIZATION, SECTIONS 73.67(A)(6), 73.93(E), 73.111(A) AND 301 DENIED SINCE THE FORFEITURE PROVISIONS ARE PUNITIVE NOT EDUCATIONAL AS PROPOSED, AND A LICENSEE IS RESPONSIBLE FOR ITS EMPLOYEES ACTION. ***WEST JERSEY B/CING CO.*** 39FCC2D0540

LOSS

PROTEST TO ASSIGNMENT OF LICENSE ON GROUNDS THAT THE ASSIGNMENT WILL ELIMINATE CURRENT PROGRAM FORMAT DENIED SINCE PROGRAM FORMAT IS AVAILABLE FROM OTHER STATIONS AND THE STATION BEING ASSIGNED HAS BEEN OPERATING AT A LOSS. ***NATIONAL BROADCASTING CO, INC.*** 39FCC2D0480

LOTTERY

PETITION TO ENLARGE ISSUES. GRANTED WITH RESPECT TO MISREPRESENTATION AND ALLEGED BROADCASTING OF LOTTERY INFORMATION SEC. 73.122 AND THE EFFECT THEREOF ON RENEWAL APPLICATION SINCE SUFFICIENT ALLEGATIONS WERE RAISED. ***FRIENDLY BROADCASTING CO.*** 39FCC2D0458

MISCONDUCT

APPLICATION FOR LICENSE RENEWAL IS DESIGNATED FOR HEARING SINCE SUBSTANTIAL AND MATERIAL QUESTIONS OF FACT CONCERNING ASCERTAINMENT OF COMMUNITY NEEDS AND MISCONDUCT AT A STATION HAVE BEEN RAISED PURSUANT TO 309(D) AND (E). ***WOIC, INC.*** 39FCC2D0355

MISREPRESENTATION

PETITION TO ENLARGE ISSUES TO INCLUDE FINANCIAL QUALIFICATIONS, STUDIO ADEQUACY, AND MISREPRESENTATION GRANTED TO DETERMINE IF THERE WAS A MISREPRESENTATION OF FACTS CONCERNING THE COMMUNITY SURVEY SINCE AT LEAST SIX PERSONS HAVE SWORN THEY WERE NOT INTERVIEWED AS PURPORTED. ***CALIFORNIA STEREO, INC.*** 39FCC2D0401

PETITION TO ENLARGE ISSUES, GRANTED WITH RESPECT TO MISREPRESENTATION AND ALLEGED BROADCASTING OF LOTTERY INFORMATION SEC. 73.122 AND THE EFFECT THEREOF ON RENEWAL APPLICATION SINCE SUFFICIENT ALLEGATIONS WERE RAISED. ***FRIENDLY BROADCASTING CO.*** 39FCC2D0458

MOTION TO ENLARGE ISSUES GRANTED TO ADD ISSUES AS TO MISREPRESENTATION AND COMPLIANCE WITH SECTION 1.65 PROVISIONS SINCE APPARENT MISSTATEMENTS HAVE RAISED A SUFFICIENT QUESTION OF APPLICANTS QUALIFICATIONS. ***ST. CROSS B/CING, INC.*** 39FCC2D0514

PETITION TO ENLARGE ISSUES GRANTED TO ADD A MISREPRESENTATION ISSUE SINCE THERE ARE SERIOUS CONFLICTING STATMENTS PRESENTED CONCERNING A LOAN COMMITMENT. ***WIOO, INC.*** 39FCC2D0543

APPLICATION FOR RENEWAL OF LICENSE GRANTED UPON FINDING THATPRINCIPALS OF LICENSEE WERE NOT INVOLVED IN A STRIKE APPLICATION AND THAT MISSTATEMENTS IN TESTIMONY WERE NOT PERJURY BUT A FAULTY SHADING OF RECOLLECTIONS. ***GRENCO, INC.*** 39FCC2D0732

PETITION TO ENLARGE ISSUES IN MUTUALLY EXCLUSIVE PROCEEDING GRANTED AS TO REQUESTED ISSUES OF LAND LEASE PRICE AND POSSIBLE MISREPRESENTATION, AND DENIED AS TO PROPOSED LOAN BY INDIVIDUAL. ***W100, INC.*** 39FCC2D0856

MITIGATION

APPLICATION FOR MITIGATION OF FORFEITURE 37FCC2D518 FOR VIOLATION OF SECS. 317 AND 73.645 INVOLVING SPONSOR IDENTIFICATION AND SEC. 73.1205 FOR CLIPPING CRAWLS CLASSIFIED AS ADVERTISING, DENIED SINCE THE ACTS WERE REPEATED FREQUENTLY. ***CHANNEL 13 OF LAS VEGAS, INC.*** 39FCC2D0128

MMUNICATIONS CARRIER, TARRIFF REQUIREMENT

PETITION FOR PARTIAL RECONSIDERATION OF ORDER FOR FORFEITUREFOR VIOLATION OF SECTION 203(C) (35 FCC 2D 707) DENIED, SINCE A CARRIER MAY NOT COLLECT ANY PAYMENT THAT IS NOT SPECIFIED IN THE TARIFF SCHEDULE THEN IN EFFECT. ***CRUCES CABLE CO., INC.*** 39FCC2D0552

MOBILE STATIONS

NOTICE OF PROPOSED RULE MAKING TO AMEND SEC. 89.257 CONCERNING MOBILE COMMUNICATIONS UNITS LICENSED IN THE LOCAL GOVERNMENT RADIO SERVICE TO PERMIT EMERGENCY VEHICLES AND COMMUNICATIONS RELATED TO GOVERNMENTAL FUNCTIONS TO THE USE OF LOCAL GOVERNMENT FREQUENCIES. ***LOCAL GOVT SERVICE MOBILE STATIONS*** 39FCC2D0164

MOTION TO STRIKE

MOTION TO STRIKE EXCEPTIONS WHICH WERE NOT FILED ON BEHALF OF APPLICANT GRANTED SINCE THEY WERE NOT AUTHORIZED BY THE APPLICANT. ***HARVEST RADIO CORP.*** 39FCC2D0160

MULTIPLEXING

REQUEST FOR WAIVER OF SEC. 74.631(D) CONCERNING THE MULTIPLEXING OF ADDITIONAL EDUCATIONAL PROGRAM MATERIAL GRANTED, PROVIDED THE TELEVISION INTERCITY RELAY SYSTEM DOES NOT OPERATE SOLELY TO RELAY THIS SIGNAL. ***WGBH EDUCATIONAL FOUNDATION*** 39FCC2D0115

MULTIPOINT DISTRIBUTION SERVICE

NOTICE OF INQUIRY AND PROPOSED RULE MAKING FOR TRANSMISSION BY WIRE OR RADIO CLOSED CIRCUIT IN THE BUSINESS RADIO SERVICE, OR THE MULTIPOINT DISTRIBUTION SERVICE OF MOTION PICTURES TO HOTEL MASTER ANTENNA SYSTEMS SHOULD BE RESTRICTED TO LIMIT THE COMPETITIVE EFFECT UPON TELEVISION OR CABLE SERVICES, AND POTENTIAL SIPHONING OF PROGRAM MATERIAL. ***TRANSMITTING PROG MATERIAL TO HOTELS*** 39FCC2D0527

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

REQUEST FOR EXTENSION OF AUTHORITY BY COMMUNICATIONS SATELLITE CORP. GRANTED FOR 1-MONTH TO PROVIDE SATELLITE COMMUNICATIONS SERVICE DIRECTLY TO NASA. ***COMMUNICATIONS SATELLITE CORP.*** 39FCC2D0697

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

PETITION TO ENLARGE ISSUES TO INCLUDE ISSUE TO ASSURE COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, DENIED IN LIGHT OF PROPOSED RULE MAKING IN 36FCC2D108. ***MUNICIPAL BROADCASTING SYSTEM*** 39FCC2D0406

NETWORK AFFILIATION AGREEMENT

MOTION TO ENLARGE ISSUES IN PROCEEDING INVOLVING RENEWAL ANDNEW APPLICANTS GRANTED AS TO REQUESTED NETWORK AFFILIATION AND FINANCIAL QUALIFICATIONS ISSUES AND DENIED AS TO REPORTING CRIMINAL VIOLATIONS, TRANSMITTER SUITABILITY, EQUAL EMPLOYMENT, PUBLIC INSPECTION, INEPTNESS, SEC. 1.514, AND 1.53(B) ISSUES. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1077

OBJECTION, INFORMAL

INFORMAL OBJECTIONS AGAINST PROPOSED CHANGE IN FORMAT IN ASSIGNMENT PROCEEDING DISMISSED, SINCE OPERATION UNDER PREVIOUS FORMAT WAS AT A CONTINUOUS LOSS. ***CITIZENS FOR PROGRESSIVE RADIO*** 39FCC2D0995

ONE-TO-A MARKET POLICY

APPLICATION FOR TRANSFER OF CONTROL AND FOR WAIVER OF SECTIONS 73.35, 73.240 AND 73.636 ONE-TO-A-MARKET WHERE ACQUISITION WILL RESULT IN COMMON OWNERSHIP OF AURAL AND TELEVISION FACILITIES IN THE SAME MARKET, GRANTED AND TRANSFER APPROVED SINCE IT FURTHERS DIVERSITY IN MASS MEDIA. ***R. W. PAGE CORPORATION*** 39FCC2D0487

OPERATIONAL FIXED STATIONS

APPLICATIONS FOR OPERATIONAL FIXED STATIONS FACILITIES IN THE BUSINESS RADIO SERVICE GRANTED IN PART TO ALLOW PRESENTATION OF FEATURE FILM AND DENIED FOR THIRD-PARTY ADVERTISERS OR CONVENTION NEWS SINCE THIS REPRESENTS A PURPOSE INCONSISTENT WITH THE PURPOSES FOR WHICH THE SERVICE WAS ESTABLISHED. ***COLUMBIA PICTURES INDUSTRIES, INC.*** 39FCC2D0411

OPERATION, CONTINUATION OF

ORDER FOR IMPOUNDMENT OF PROFITS, AFTER CAUSE REMANDED BY COURT OF APPEALS, IN CONNECTION WITH DENIAL OF STATION LICENSE WHERE THE LICENSEE CON-

TINUED OPERATION PENDING AWARDING OF NEW LICENSE. NET PROFITS FROM 9/8/70 TO 4/17/71 TO BE PAID IN TRUST FOR BENEFIT OF NONPROFIT EDUCATIONAL BROADCASTING INTERESTS IN MISSISSIPPI. ***IMPOUNDMENT OF PROFITS*** 39FCC2D0462

OPERATOR LICENSE

SEC. 13.70 AMENDED TO INCLUDE PROHIBITION OF ALTERATION OR DUPLICATION OF A COMMERCIAL RADIO OPERATORS LICENSE AS WELL AS THE OBTAINING OF SAME BY FRAUDULENT MEANS. ***COMMERCIAL RADIO OPERATORS*** 39FCC2D0695

ORAL ARGUMENT

APPLICATION FOR REVIEW OF A REVIEW BOARD DECISION, 29 FCC 2D 533 , GRANTING APPLICATION FOR VACATED FREQUENCY, GRANTED DUE TO SERIOUS PUBLIC INTEREST QUESTIONS RAISED CONCERNING CHARACTER QUALIFICATIONS OF SUCCESSFUL APPLICANT, AND ORAL ARGUMENT ORDERED WITH ALL APPLICANTS PARTICIPATING. ***JOBBINS, CHARLES W.*** 39FCC2D0597

APPLICATION FOR REVIEW OF DECISION 34FCC2D660 AND FOR LEAVE TO FILE SUPPLEMENTAL STATEMENTAL STATEMENT GRANTED AND MATTER SCHEDULED FOR ORAL ARGUMENT. ***ALABAMA MICROWAVE, INC.*** 39FCC2D0629

OVERLAP

APPLICATION FOR NEW FM STATION PREVIOUSLY DELAYED DUE TO POTENTIAL OVERLAP OF CONTOURS AND REGIONAL CONCENTRATION ISSUES, IS GRANTED SINCE SUFFICIENT EVIDENCE OF DILUTION OF MEDIA IN THE AREA, ABSENCE OF OVERLAP, AND NO MILEAGE SEPARATION PROBLEMS HAS BEEN SUBMITTED. ***MUSKEGON HEIGHTS B/CING CO., INC.*** 39FCC2D0475

APPLICATION PREVIOUSLY DISMISSED (27FCC2D66) ON DUOPOLY RULE(SEC. 73.35) REINSTATED AND DESIGNATED FOR HEARING ON ISSUES AS TO FINANCIAL, AREAS AND POPULATIONS, 307(B), OVERLAP, AND COMMUNITY NEEDS. REQUESTS FOR WAIVER OF SECS. 1.580(B), 1.580(B), 1.569(B)(2)(I) (TRANSMITTER SITE LOCATION) AND SECS. 1.571(C) AND 1.227(B)(1) ARE GRANTED. ***QUINNIPIAC VALLEY SERVICE, INC.*** 39FCC2D0948

PAST PERFORMANCE

REQUEST TO ENLARGE ISSUES IN RENEWAL HEARING TO INCLUDE A MERITORIOUS PROGRAMMING ISSUE, GRANTED TO THE EXTENT THAT APPLICANT WILL BE ALLOWED TO PRESENT EVIDENCE RE ETHNIC- ORIENTED PHASES OF ITS PAST PROGRAMMING. ***COSMOPOLITAN B/CING CORP.*** 39FCC2D0698

APPEAL FROM RULING OF HEARING EXAMINER DENYING REQUEST TO ADDUCE EVIDENCE OF COMPETITORS UNUSUALLY BAD PAST B/CST PERFORMANCE GRANTED. APPEAL FROM DENIAL OF REQUEST TO PRESENT EVIDENCE OF PETITIONERS UNUSUALLY GOOD PAST B/CST PERFORMANCE DENIED, BOTH ON THE BASIS OF THRESHOLD SHOWINGS. ***HOLT, CHARLES W.*** 39FCC2D0776

PERJURY

APPLICATION FOR RENEWAL OF LICENSE GRANTED UPON FINDING THATPRINCIPALS OF LICENSEE WERE NOT INVOLVED IN A STRIKE APPLICATION AND THAT MISSTATEMENTS IN TESTIMONY WERE NOT PERJURY BUT A FAULTY SHADING OF RECOLLECTIONS. ***GRENCO, INC.*** 39FCC2D0732

PETITION FOR RECONSIDERATION, DENIAL OF

PETITION FOR STAY AND FOR RECONSIDERATION OF A PARTIAL GRANTOF AN APPLICATION TO CONSOLIDATE 22 PUBLIC BRANCH OFFICES INTO A SINGLE PUBLIC MESSAGE CENTER, DISMISSED FOR FAILURE TO RAISE ADDITIONAL FACTS AND SINCE EACH APPLICATION FOR CONSOLIDATION WILL BE EXAMINED ON AN INDIVIDUAL BASIS. ***WESTERN UNION TEL. CO.*** 39FCC2D0290

PETITION FOR RECONSIDERATION OF DECISION GRANTING EMERGENCY SPECIAL TEMPORARY AUTHORITY PURSUANT TO 309(F) TO CONSTRUCT AND OPERATE A UHF TRANSLATOR STATION, PENDING ACTION ON APPLICATION FOR REGULAR AUTHORITY, DENIED AND EMERGENCY AUTHORITY REAFFIRMED, SINCE NO SHOWING OF PUBLIC DETRIMENT, PRIVATE OR ECONOMIC INJURY, HAS BEEN MADE. ***TELEMUNDO, INC.*** 39FCC2D0522

TELEMUNDO, INC. DECISION DENYING RECONSIDERATION OF 38 FCC 2D 646 ORDER DENYING TEMPORARY OPERATING AUTHORITY FOR UHF TRANSLATOR AFFIRMED QUALITY T/CING CORP. V. FCC (D.C. CIR. 73-1204). 39FCC2D0522

PETITION FOR RECONSIDERATION OF DENIAL OF PETITION REQUESTING RENEWAL OF LICENSE AND TRANSFER OF CONTROL, DENIED SINCE SUBSTANTIAL PROFIT WOULD COME TO ALLEGED WRONGDOER IF GRANTED AND CONTINUATION OF PROCEEDING HAS NOT BEEN SHOWN TO BE DAMAGING TO PETITIONERS HEALTH. ***WALTON B/CING CO.*** 39FCC2D1074

PETITION FOR RECONSIDERATION, GRANT OF

PETITION FOR RECONSIDERATION OF RESTRICTIVE CONDITIONS IN GRANT OF AUTHORITY TO SUPPLEMENT EXISTING INTERSTATE AND FOREIGN SPECIALIZED COMMUNICATIONS SERVICES GRANTED, AND CONDITIONS DELETED, SINCE THEY NO LONGER APPEAR NECESSARY IN LIGHT OF MORE RECENT POLICY DETERMINATIONS AND RULE CHANGES IN THE CATV FIELD. ***COMMUNICATIONS INTERSTATE OR FOREIGN*** 39FCC2D0131

PETITION TO DENY

AVCO B/CING CORP. DECISION GRANTING RENEWAL OF TV B/C LICENSE AFFIRMED W/O OPINION THE BILINGUAL CULTURAL COALITION ON MASS MEDIA V. FCC (D.C. CIR. 72-2205). ***AVCO BROADCASTING CORP.*** 39FCC2D0004

PLEADING

PETITION FOR RECONSIDERATION OF ORDER FOR INSPECTION OF ANNUAL FINANCIAL REPORTS DENIED, SINCE PLEADING PREVIOUSLY OVERLOOKED CONTAINS NO NEW PERSUASIVE EVIDENCE AND RECORDS ARE NECESSARY FOR PREPARATION OR PETITION TO DENY. ***CITIZENS COMMUNICATIONS CENTER*** 39FCC2D0876

POLITICAL BROADCAST, CANDIDATE, LEGALLY QUALIFIED

COMPLAINT CONCERNING EQUAL TIME PROVISIONS OF SECTION 315 DENIED SINCE NON OF THE APPLICANTS WERE LEGALLY QUALIFIED CANDIDATES UNDER STATE OR NATIONAL REQUIREMENTS, OR UNDER SECTION 73.657(A), AND SINCE NEITHER HAD ARRIVED AT THE PRESCRIBED AGE FOR CANDIDATES FOR PRESIDENT AND VICE PRESIDENT. ***SOCIALIST WORKER PARTY 1972*** 39FCC2D0089

POLITICAL BROADCAST, EQUAL OPPORTUNITY, COMPLAINT PROCEDURE

COMPLAINTS ALLEGING FAILURE TO PRESENT VIEWS CONTRARY TO ANTI-MINING AND BOMBING NORTH VIETNAM PROGRAM DENIED SINCE OPPOSING VIEWS HAD BEEN BROADCAST. COMPLAINT REGARDING FAILURE TO PROVIDE EQUAL TIME UNDER SECS. 315, 312(A)(7), AND ENDORSEMENT OF CANDIDATE UNDER SEC. 399, DISMISSED SINCE UNSUPPORTED. ***ROWLEY, HORACE P.*** 39FCC2D0437

POLITICAL BROADCAST, EQUAL OPPORTUNITY, ELIGIBLE CLAIMANT.

COMPLAINT AGAINST LICENSEE ALLEGING DENIAL OF REASONABLE ACCESS (SEC. 312(A)) FOR AIRING OF POLITICAL CANDIDATES VIEWS FOUND NOT TO WARRANT FURTHER ACTION, SINCE THERE WAS NO COMPLAINT FROM THE CANDIDATE HIMSELF. ***REASONABLE ACCESS*** 39FCC2D1064

POLITICAL BROADCAST, EQUAL OPPORTUNITY, EXEMPT NEWSCAST

COMPLAINT CONCERNING FAILURE OF BROADCAST MEDIA TO GIVE EQUAL NEWS COVERAGE TO COMPLAINANT AS A CANDIDATE, DISMISSED SINCE THE COMMISSION WILL NOT SUBSTITUTE ITS NEWS JUDGMENT FOR THAT OF A BROADCASTER IN THE ABSENCE IF DELIBERATE DISTORTION. ***ODONNELL, ROBERT E.*** 39FCC2D0508

COMPLIANCE CONCERNING 315 POLITICAL BROADCASTS DISMISSED SINCE EQUAL TIME IS NOT REQUIRED TO A BONA FIDE NEWSCAST OF A CANDIDATE, AND NO EVIDENCE REGARDING A PERSONAL ATTACK ON HONESTY, CHARACTER OR INTEGRITY HAS BEEN PROVIDED, AND 73.123(C) ONLY REQUIRES AN OPPORTUNITY TO RESPOND TO AN AUTHORIZED EDITORIAL OF ENDORSEMENT. ***RIHERD, MRS. CARMEN C.*** 39FCC2D0617

POLITICAL BROADCAST, LICENSEE OBLIGATION.

COMPLAINT CONCERNING SECTION 315 EQUAL OPPORTUNITY RULING DISMISSED SINCE LICENSEE DID NOT INTENTIONALLY DISCRIMINATE BY FIRST ADVISING COMPLAINANT THAT NO SPOT ANNOUNCEMENTS WOULD BE AVAILABLE FOR HIS PRIMARY RACE, WHICH ADVICE WAS IN ERROR, AND ALLOWING HIS OPPONENT TIME. LICENSEE FOUND TO BE IN VIOLATION OF SEC. 73.657(A)(2). ***HARRISON, JAMES L.*** 39FCC2D0504

POLITICAL CANDIDATES PRESIDENTIAL

COMPLAINT CONCERNING EQUAL TIME PROVISIONS OF SECTION 315 DENIED SINCE NON OF THE APPLICANTS WERE LEGALLY QUALIFIED CANDIDATES UNDER STATE OR NATIONAL REQUIREMENTS, OR UNDER SECTION 73.657(A), AND SINCE NEITHER HAD ARRIVED AT THE PRESCRIBED AGE FOR CANDIDATES FOR PRESIDENT AND VICE PRESIDENT. ***SOCIALIST WORKER PARTY 1972*** 39FCC2D0089

POLITICAL EDITORIALS

COMPLIANCE CONCERNING 315 POLITICAL BROADCASTS DISMISSED SINCE EQUAL TIME IS NOT REQUIRED TO A BONA FIDE NEWSCAST OF A CANDIDATE, AND NO EVIDENCE REGARDING A PERSONAL ATTACK ON HONESTY, CHARACTER OR INTEGRITY HAS BEEN PROVIDED, AND 73.123(C) ONLY REQUIRES AN OPPORTUNITY TO RESPOND TO AN AUTHORIZED EDITORIAL OF ENDORSEMENT. ***RIHERD, MRS. CARMEN C.*** 39FCC2D0617

POWER INCREASE OF

APPLICATION TO INCREASE DAYTIME POWER FROM 250 TO 500 WATTS.LOCAL SUNSET. UNLIMITED TIME, GRANTED FOLLOWING FAVORABLE RESOLUTION OF INTERFERENCE AND PUBLIC INTEREST ISSUES. ***GENERAL B/CING CO.*** 39FCC2D0728

APPLICATION FOR AN INCREASE IN DAYTIME POWER DENIED SINCE THE SUBURBAN COMMUNITY 307(B) PRESUMPTION OF SERVICE HAS NOT BEEN SATISFACTORILY REBUTTED. ***WHJB, INC.*** 39FCC2D0296

PRESUMPTION REBUTTABLE

APPLICATION FOR AN INCREASE IN DAYTIME POWER DENIED SINCE THE SUBURBAN COMMUNITY 307(B) PRESUMPTION OF SERVICE HAS NOT BEEN SATISFACTORILY RE3UTTED. ***WHJB, INC.*** 39FCC2D0296

PRESUNRISE OPERATION

APPLICATION TO CHANGE LOCATION AND CLASS OF STATION FROM CLASS II TO CLASS III DENIED SINCE THE PROPOSED OPERATION WOULD LOSE A PORTION OF ITS BROADCAST DAY BY DISCONTINUANCE OF PRE-SUNRISE OPERATION, AND THE 307(B) ISSUE (EQUITABLE DISTRIBUTION OF BROADCAST FACILITIES) IS CONTROLLING. COMPETING APPLICATION GRANTED. ***SADOW, JAY*** 39FCC2D0808

FORFEITURE OF 800 ORDERED FOR REPEATED VIOLATIONS OF SEC. 73.87 (OPERATION FROM 6 A.M. WITH NONDIRECTIONAL DAYTIME MODE AND POWER. PRIOR TO THE SUNRISE

TIMES SPECIFIED IN LICENSE) AND SEC. 73.111(A) (FAILURE TO KEEP MAINTENACE LOGS). ***HEART OF THE BLACK HILLS STATION*** 39FCC2D1045

PRICING

REQUEST FOR ORAL ARGUMENT BEFORE THE COMMISSION EN BANC IN THE MATTER OF APPLICATIONS FOR RENEWAL OF LICENSES OF RADIO COMMON CARRIER STATIONS IN THE DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE, DENIED. CASE REOPENED AND REMANDED TO ADMINISTRATIVE LAW JUDGE TO ASCERTAIN INFORMATION RE PRICING PRACTICES OF APPLICANT. ***UNITED TELEPHONE CO. OF OHIO*** 39FCC2D0845

PRIME TIME ACCESS

PETITION BY CATV SYSTEM FOR SPECIAL RELIEF SEEKING WAIVER OFSEC. 76.93 TO ALLOW FOR SIMULTANEOUS ONLY EXCLUSIVITY RATHER THAN SAME DAY EXCLUSIVITY DENIED SINCE SUCH CHANGE WOULD RESULT IN A 55(LOSS OF PRIME TIME HOURS. ***MAGIC VALLEY CABLE VISION, INC.*** 39FCC2D0166

PRIME TIME ACCESS RULE

THE PRIME TIME ACCESS RULE (SEC. 73.658(K)(3)), IS CLARFIED TO ALLOW THE PRESENT PRACTICE OF SHOWING MOVIES, PREVIOUSLY SHOWN ON A NETWORK MORE THAN TWO YEARS AGO, DURING THAT PORTION OF PRIME TIME FROM WHICH NETWORK PROGRAMS ARE EXCLUDED, PENDING RULE MAKING PROCEEDINGS. ***PRIME TIME ACCESS RULE*** 39FCC2D0080

PUBLIC NOTICE OF A REQUEST FOR WAIVER OF THE PRIME TIME ACCESS RULE, 73.658(K), TO PERMIT A NETWORK TO PRESENT A HALF-HOUR WEEKLY CHILDRENS PROGRAM, IS GIVEN TO ALLOW INTERESTED PARTIES OPPORTUNITY TO COMMENT. ***PRIME TIME ACCESS RULE*** 39FCC2D0079

REQUESTS FOR WAIVER OF SEC. 73.0658(K) (PRIME TIME ACCESS RULE) TO ALLOW COMPLETE AIRING OF MAJOR SPORTS EVENTS GRANTED. ENTIRE EVENT MAY BE TELECAST BUT NOT INCLUDING ANY POST-GAME MATERIAL. ***PRIME TIME ACCESS RULE*** 39FCC2D0945

PRIMER, ASCERTAINMENT OF COMMUNITY PROBLEMS

APPLICATION FOR LICENSE RENEWAL (SEC. 309(D)) GRANTED, SINCETHE PETITION TO DENY FAILED TO ESTABLISH ANY SUBSTANTIAL AND MATERIAL QUESTIONS OF FACT CONCERNING ALLEGED DISCRIMINATORY EMPLOYMENT PRACTICES AND INADEQUATE COMMUNITY SURVEY. ***GREAT TRAILS B/CING CORP.*** 39FCC2D0039

APPLICATION FOR LICENSE RENEWAL IS DESIGNATED FOR HEARING SINCE SUBSTANTIAL AND MATERIAL QUESTIONS OF FACT CONCERNING ASCERTAINMENT OF COMMUNITY NEEDS AND MISCONDUCT AT A STATION HAVE BEEN RAISED PURSUANT TO 309(D) AND (E). ***WOIC, INC.*** 39FCC2D0355

PRIVATE LINE SERVICE

TARIFF SCHEDULES PROPOSED BY A.T & T. TRANSMITTAL 11618 FCC 259 and 260 AND WESTERN UNION TRANSMITTAL 6772 FCC NO. 254 AFFECTING WIDE AREA TELEPHONE AND PRIVATE LINE SERVICES ORDERED INVESTIGATED TO DETERMINE THEIR LAWFULNESS. ***AMER. TEL. & TEL.—LONG LINES DEPT*** 39FCC2D0637

PROPOSED REVISIONS OF TARIFF, DEALING WITH UNMIXED PRIVATE LINE SERVICE, SUSPENDED DUE TO QUESTIONABLE LAWFULNESS OF THE REVISIONS, AND INVESTIGATION ORDERED TO DETERMINE WHETHER LAWFUL AND WHAT CORRECTIVE MEASURES SHOULD BE TAKEN. (SECS. 201(B) AND 202(A)). ***AMER. TEL. & TEL. CO.*** 39FCC2D0631

PROCESS ABUSE OF

MOTION TO ADD AN ABUSE OF PROCESS ISSUE IN COMPARATIVE PROCEEDING INVOLVING RENEWAL AND NEW APPLICANTS FOR TV STATION, DENIED SINCE ALLEGATIONS OF ABUSE ARE UNSUBSTANTIATED. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1092

PROFIT

ORDER FOR IMPOUNDMENT OF PROFITS, AFTER CAUSE REMANDED BY COURT OF APPEALS, IN CONNECTION WITH DENIAL OF STATION LICENSE WHERE THE LICENSEE CONTINUED OPERATION PENDING AWARDING OF NEW LICENSE. NET PROFITS FROM 9/8/70 TO 4/17/71 TO BE PAID IN TRUST FOR BENEFIT OF NONPROFIT EDUCATIONAL BROADCASTING INTERESTS IN MISSISSIPPI. ***IMPOUNDMENT OF PROFITS*** 39FCC2D0462

PROGRAM CLIPPING

APPLICATION FOR MITIGATION OF FORFEITURE 37FCC2D518 FOR VIOLATION OF SECS. 317 AND 73.645 INVOLVING SPONSOR IDENTIFICATION AND SEC. 73.1205 FOR CLIPPING CRAWLS CLASSIFIED AS ADVERTISING, DENIED SINCE THE ACTS WERE REPEATED FREQUENTLY. ***CHANNEL 13 OF LAS VEGAS, INC.*** 39FCC2D0128

PROGRAM LENGTH COMMERCIALS

PUBLIC NOTICE ISSUED AS A REMINDER THAT PROGRAM LENGTH COMMERCIALS INTERWOVEN WITH COMMERCIAL MESSAGES ARE A SERIOUS DERELICTION BY THE LICENSEE AND THAT IN THE FUTURE THE FCC WILL IMPOSE SANCTIONS. ***PROGRAM LENGTH COMMERCIALS*** 39FCC2D1062

A PROGRAM SPONSORED BY AN ASSOCIATION OF DEALERS IN WHICH VARIOUS PRODUCTS OF THE ASSOCIATION ARE MENTIONED, AND IN WHICH NO COMMERCIAL TIME IS LOGGED, IS HELD TO BE A VIOLATION OF SEC. 73.670(A)(2). ***TAFT B/CING CO.*** 39FCC2D1070

PROGRAMMING COMPARISON

PETITION TO ENLARGE ISSUES TO INCLUDE COST ESTIMATE AND COMPARATIVE PROGRAMMING ISSUES DENIED SINCE PETITIONER HAS FAILED TO MAKE A THRESHOLD SHOWING THAT THERE ARE SIGNIFICANT DIFFERENCES IN PROGRAMMING PROPOSALS. ***EASTERN B/CING CO.*** 39FCC2D0700

PROGRAMMING EXCESS COMMERCIALS

PUBLIC NOTICE ISSUED AS A REMINDER THAT PROGRAM LENGTH COMMERCIALS INTERWOVEN WITH COMMERCIAL MESSAGES ARE A SERIOUS DERELICTION BY THE LICENSEE AND THAT IN THE FUTURE THE FCC WILL IMPOSE SANCTIONS. ***PROGRAM LENGTH COMMERCIALS*** 39FCC2D1062

PROGRAMMING EXCLUSIVITY

PETITION REQUESTING MODIFICATION OF STATION LICENSE BY REMOVAL OF PROGRAM EXCLUSIVITY CONDITION (22 FCC 2D 950) DENIED. SINCE MEASUREMENT DATA SHOWS THAT STRONG SIGNALS WERE AVAILABLE IN THE AREA FROM BOTH THE TRANSLATOR AND THE TELEVISION STATION. ***WGAL TELEVISION, INC.*** 39FCC2D0627

PROGRAMMING FORMAT CHANGE

PROTEST TO ASSIGNMENT OF LICENSE ON GROUNDS THAT THE ASSIGNMENT WILL ELIMINATE CURRENT PROGRAM FORMAT DENIED SINCE PROGRAM FORMAT IS AVAILABLE FROM OTHER STATIONS AND THE STATION BEING ASSIGNED HAS BEEN OPERATING AT A LOSS. ***NATIONAL BROADCASTING CO, INC.*** 39FCC2D0480

INFORMAL OBJECTIONS AGAINST PROPOSED CHANGE IN FORMAT IN ASSIGNMENT PROCEEDING DISMISSED, SINCE OPERATION UNDER PREVIOUS FORMAT WAS AT A CONTINUOUS LOSS. ***CITIZENS FOR PROGRESSIVE RADIO*** 39FCC2D0995

PROGRAMMING ISSUES

APPLICATION FOR LICENSE RENEWAL GRANTED SINCE THE PETITION TO DENY FAILED TO ESTABLISH MATERIAL QUESTION FACT (SEC. 309 (D)), CONCERNING EMPLOYMENT PRACTICES, PROGRAMMING AVAILABILITY OF PUBLIC FILE AND ASCERTAINMENT OF COMMUNITY PROBLEMS. ***MAHONING VALLEY B/CING CORP.*** 39FCC2D0052

PROGRAMMING MERITORIOUS

REQUEST TO ENLARGE ISSUES IN RENEWAL HEARING TO INCLUDE A MERITORIOUS PROGRAMMING ISSUE, GRANTED TO THE EXTENT THAT APPLICANT WILL BE ALLOWED TO PRESENT EVIDENCE RE ETHNIC- ORIENTED PHASES OF ITS PAST PROGRAMMING. ***COSMOPOLITAN B/CING CORP.*** 39FCC2D0698

APPEAL FROM RULING OF HEARING EXAMINER DENYING REQUEST TO ADDUCE EVIDENCE OF COMPETITORS UNUSUALLY BAD PAST B/CST PERFORMANCE GRANTED. APPEAL FROM DENIAL OF REQUEST TO PRESENT EVIDENCE OF PETITIONERS UNUSUALLY GOOD PAST B/CST PERFORMANCE DENIED, BOTH ON THE BASIS OF THRESHOLD SHOWINGS. ***HOLT, CHARLES W.*** 39FCC2D0776

PROGRAMMING SPECIALIZED

APPLICATION FOR REVIEW OF DECISION, RULING FAIRNESS DOCTRINEINAPPLICABLE TO MOUNTAIN SPORTS NETOWRK, DENIED SINCE THE NETOWRK PROGRAMMING IS SPECIALIZED AND SEASONAL WITH NO REGULAR NEWS OR COMMENTARY PROGRAMS AND SEC. 315 OBLIGATIONS APPLY ONLY TO INDIVIDUAL STATION LICENSEES, NOT NETWORKS. ***APPALACHIAN RESEARCH & DEFENSE FUND*** 39FCC2D0708

PUBLIC INSPECTION OF LOCAL STATION FILES

APPLICATION FOR RENEWAL OF LICENSE GRANTED SINCE PETITION TODENY FAILED TO MEET 390(D) REQUIREMENTS OF ALLEGING SPECIFIC ACTS TO ESTABLISH A PRIMA FACIE CASE FOR DENIAL AS TO EQUAL EMPLOYMENT OPPORTUNITIES, COMMUNITY NEEDS AND ACCESS TO PUBLIC FILES (SEC. 1.539). ***AVCO BROADCASTING CORP.*** 39FCC2D0004

PUBLIC INTEREST BENEFITS

MOTION TO ENLARGE ISSUES TO COMPARATIVELY CONSIDER PUBLIC INTEREST BENEFITS OF TRANSLATOR AND RELAY AUTHORIZATIONS GRANTED TO RENEWAL APPLICANT AND ABILITY OF NEW APPLICANT TO PROVIDE COMPARABLE SERVICE, DENIED SINCE ULTIMATE EFFECTS OF PREVIOUS AUTHORIZATIONS IS HIGHLY SPECULATIVE. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1096

PUBLIC MESSAGE SERVICE

PETITION FOR STAY AND FOR RECONSIDERATION OF A PARTIAL GRANTOF AN APPLICATION TO CONSOLIDATE 22 PUBLIC BRANCH OFFICES INTO A SINGLE PUBLIC MESSAGE CENTER, DISMISSED FOR FAILURE TO RAISE ADDITIONAL FACTS AND SINCE EACH APPLICATION FOR CONSOLIDATION WILL BE EXAMINED ON AN INDIVIDUAL BASIS. ***WESTERN UNION TEL. CO.*** 39FCC2D0290

PUBLIC NOTICE

THE PRIME TIME ACCESS RULE (SEC. 73.658(K)(3)), IS CLARFIED TO ALLOW THE PRESENT PRACTICE OF SHOWING MOVIES, PREVIOUSLY SHOWN ON A NETWORK MORE THAN TWO YEARS AGO, DURING THAT PORTION OF PRIME TIME FROM WHICH NETWORK PROGRAMS ARE EXCLUDED, PENDING RULE MAKING PROCEEDINGS. ***PRIME TIME ACCESS RULE*** 39FCC2D0080

PUBLIC NOTICE OF A REQUEST FOR WAIVER OF THE PRIME TIME ACCESS RULE. 73.658(K), TO PERMIT A NETWORK TO PRESENT A HALF-HOUR WEEKLY CHILDRENS PROGRAM, IS GIVEN TO ALLOW INTERESTED PARTIES OPPORTUNITY TO COMMENT. ***PRIME TIME ACCESS RULE*** 39FCC2D0079

PUBLIC NOTICE OF THE ADOPTION OF A STATEMENT OF GENERAL GUIDELINES FOR AUDIO AND/OR VISUAL COVERAGE OF COMMISSION PROCEEDINGS IN LIGHT OF INCREASING PUBLIC INTEREST. ***AUDIO VISUAL COVERAGE*** 39FCC2D0373

PETITION FOR RECONSIDERATION OF ORDER INVOLVING PROCESSING AND PUBLIC NOTICE PRECEDURES FOR AVIATION SERVICE APPLICATIONS GRANTED AND AMENDMENT OF SEC. 1.962(E), CONCERNING NOTICE WHERE APPLICATION IS RETURNED FOR CORRECTION, ADOPTED. ***APPLICATIONS - SAFETY AND SPECIAL*** 39FCC2D0124

PUBLICATION

APPLICATION FOR AM STATION GRANTED SINCE FAILURE TO PUBLISH LOCAL NOTICE AT REQUIRED TIME (SEC. 1.580(C)), FAILURE TO HAVE COPY FOR PUBLIC INSPECTION, AND FAILURE TO REPORT A POWER INCREASE APPLICATION (SEC. 1.514) ARE NOT SUFFICIENTLY SERIOUS TO DISQUALIFY THE APPLICANT. ***FRANKLIN BROADCASTING CO.*** 39FCC2D0032

PETITION TO ENLARGE ISSUES TO INCLUDE FAILURE TO PUBLISH NOTICE IN A DAILY PAPER OF GENERAL CIRCULATION, SEC 580 C , DENIED SINCE THE SUPREME COURT OF IOWA HAS RULED THAT THE PAPER INVOLVED WAS OF GENERAL CIRCULATION. ***BREECE, JOHN L.*** 39FCC2D0376

PUBLICATION IN DROP-OUT CASE

APPEAL FROM ADM. LAW JUDGE RULING, DISMISSING APPLICATION WITHOUT REQUIRING PUBLICATION, GRANTED AND SET ASIDE. JOINT AGREEMENT FOR DISMISSAL OF APPLICATION DENIED. ***CRAIN, ALBERT L.*** 39FCC2D0878

QUALIFICATIONS, BASIC

PETITION TO ENLARGE ISSUES TO DETERMINE IF AN APPLICANT KNOWINGLY SOLICITED A FALSE AND MISLEADING STATEMENT AND THE EFFECT THEREOF ON HIS BASIC AND/OR COMPARATIVE QUALIFICATIONS IS GRANTED SINCE THERE ARE BOTH CONFLICTS IN AFFIDAVITS AND UNDISPUTED FACTS WHICH WARRANT AN EVIDENTIARY HEARING. ***WIOO, INC.*** 39FCC2D0351

RADIATION DEVICES, RESTRICTED

PETITION FOR RECONSIDERATION REQUESTING EXTENSION OF WAIVERSOF SECS 2.805 AND 15.7 PERMITTING MARKETING OF CLASS I TV DEVICES AND SEC. 15.407 REQUIRING SAID DEVICES TO BE EQUIPPED WITH A RECEIVER TRANSFER SWITCH HAVING A 60 DB ISOLATION, GRANTED SINCE TIMETABLES PRESENTED INDICATE UNDUE HARDSHIP WOULD RESULT TO MANUFACTURERS WITHOUT EXTENSION OF WAIVERS. ***CLASS I TV DEVICE*** 39FCC2D0689

SEC. 15.309(B) AMENDED TO FURTHER SUPPRESS SPURIOUS EMISSIONS FROM SENSORS OPERATING 915, 2450 AND 5800 MHZ BANDS. REQUEST FOR WAIVER OF AMENDED RULE DENIED. ***FIELD DISTRUBANCE SENSORS*** 39FCC2D0713

RADIO OPERATOR, EXAMINATIONS

SECTION 0.485 AND APPENDIX 1 PART 97 OF THE COMMISSIONS RULES REGARDING RADIO OPERATOR EXAMINATION POINTS, AMENDED. ***RADIO OPERATOR EXAMINATION POINTS*** 39FCC2D0493

REASONABLE OPPORTUNITY

COMPLAINT UNDER SEC. 396(G)(1)(A), REQUESTING THE PRESENTATION OF OPPOSING VIEWPOINTS TO BLANCE THE STATIONS PRESENTATIONS, DISMISSED SINCE THE FAIR-

NESS DOCTRINE DOES NOT REQUIRE A RESPONSE TO AN INDIVIDUAL SPEECH OR PRESENTATION, BUT ONLY A REASONABLE OPPORTUNITY OVER A REASONABLE PERIOD OF TIME. ***ACCURACY IN MEDIA, INC.*** 39FCC2D0416

COMPLIANT ALLEGING FAILURE TO PRESENT OPPOSING VIEWS TO CRITICS OF THE PRESIDENTS POLICY IN VIETNAM, IN VIOLATION OF 396 (G)(1)(A), DISMISSED SINCE COMPLAINT FAILS TO DISCLOSE GROUNDS FOR CONCLUDING THAT REASONABLE OPPORTUNITY HAS NOT BEEN AFFORDED IN OVERALL PROGRAMMING. ***ACCURACY IN MEDIA, INC.*** 39FCC2D0558

COMPLAINT CONCERNING THE FAIRNESS DOCTRINE FOR PERSONAL ATTACK DISMISSED SINCE THE STATEMENTS DID NOT ATTACK OR OTHERWISE IMPUGN ONES HONESTY, CHARACTER OR INTEGRITY AND TIME WAS OFFERED AND GRANTED TO PRESENT CONTRASTING VIEWS. SEC. 326 . ***KASKASKIA JUNIOR COLLEGE*** 39FCC2D0566

COMPLAINT CONCERNING THE FAIRNESS DOCTRINE REQUIREMENT TO PRESENT CONTRASTING VIEWS DISMISSED SINCE THE LICENSEES JUDGMENT DOES NOT APPEAR UNREASONABLE AND ONE NEED ONLY AFFORD REASONABLE OPPORTUNITY, NOT EQUAL TIME ***TEXAS COMM. ON NATURAL RESOURCES*** 39FCC2D0569

COMPLAINT CONCERNING THE FAIRNESS DOCTRINE REQUIREMENT TO PRESENT CONTRASTING VIEWS DISMISSED SINCE A REFUSAL TO PRESENT A SPECIFIC PROGRAM IN OPPOSITION IS NOT UNREASONABLE AND NO FACTS WERE PROVIDED TO INDICATE THAT REASONABLE OPPORTUNITY WAS NOT PROVIDED IN THE OVERALL PROGRAMMING. ***VOTERS ORGANIZED THINK ENVIRONMENT*** 39FCC2D0571

RECORDS INSPECTION OF

REQUEST FOR THE INSPECTION OF SUMMARY RECORD OF THE 62ND MEETING OF ICS, CONCERNING THE INTELSAT IV SATELLITE SERIES, GRANTED IN PART PURSUANT TO THE REVIEW REQUIREMENTS OF 0.461 (D)(2), BUT REQUEST FOR DELAY OF FURTHER COMMISSION ACTION ON THE SERIES DENIED DUE TO THE IMMEDIATE NEED FOR ACTION AND TIMING OF THE REQUEST. ***ITT WORLD COMM., INC.*** 39FCC2D0593

REIMBURSEMENT FOR EXPENSES

A REIMBURSEMENT AGREEMENT DEPENDENT UPON A FAVORABLE RULING ON SECS. 1 514(A) AND 1.65 ISSUES (FAILURE TO REPORT CHANGES) GRANTED, SINCE THE FAILURE TO REPORT WAS DUE TO A MISUNDERSTANDING OF THE APPLICATION DIRECTIONS ***SANDHILL COMMUNITY B/CERS, INC.*** 39FCC2D0086

APPEAL FROM ADMINISTRATIVE JUDGES ORDER GRANTING APPLICATIONFOR REIMBURSEMENT, GRANTED AND ORDER FCC 72M-1595 IS SET ASIDE PENDING RESOLUTION OF OUTSTANDING CHARACTER ISSUE AGAINST APPLICANT. ***ST. CROSS B/CING, INC.*** 39FCC2D0512

REMAND

REQUEST FOR ORAL ARGUMENT BEFORE THE COMMISSION EN BANC IN THE MATTER OF APPLICATIONS FOR RENEWAL OF LICENSES OF RADIO COMMON CARRIER STATIONS IN THE DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE, DENIED. CASE REOPENED AND REMANDED TO ADMINISTRATIVE LAW JUDGE TO ASCERTAIN INFORMATION RE PRICING PRACTICES OF APPLICANT. ***UNITED TELEPHONE CO. OF OHIO*** 39FCC2D0845

RENEWAL APPLICANT VS. NEW APPLICANT

PETITION FOR RECONSIDERATION OF AN ORDER DEFERRING ACTION ONAPPLICATION 35 FCC2D776 , PENDING RESOLUTION OF A REVOCATION PROCEEDING INVOLVING A COMPETING APPLICATION FOR RENEWAL AND DESIGNATION FOR HEARING, DENIED SINCE THE REVOCATION PROCEEDING IS NEAR COMPLETION. ***RADIO STAMFORD, INC.*** 39FCC2D0084

RADIO STAMFORD, INC. DECISION DENYING RECONSIDERATION OF 35 FCC 2D 776 ORDER DENYING DESIGNATION OF COMPETING APPLICATION FOR COMPARATIVE HEARING HAS APPEAL PENDING. RADIO STAMFORD, INC. V. FCC D.C. CIR. 73-1201 . 39FCC2D0084

MOTION TO ENLARGE ISSUES IN PROCEEDING INVOLVING RENEWAL ANDNEW APPLICANTS GRANTED AS TO REQUESTED NETWORK AFFILIATION AND FINANCIAL QUALIFICATIONS ISSUES AND DENIED AS TO REPORTING CRIMINAL VIOLATIONS, TRANSMITTER SUITABILITY, EQUAL EMPLOYMENT, PUBLIC INSPECTION, INEPTNESS, SEC. 1.514, AND 1.53(B) ISSUES. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1077

RENEWAL, DESIGNATED FOR HEARING

PETITION FOR RECONSIDERATION OF DENIAL OF PETITION REQUESTING RENEWAL OF LICENSE AND TRANSFER OF CONTROL, DENIED SINCE SUBSTANTIAL PROFIT WOULD COME TO ALLEGED WRONGDOER IF GRANTED AND CONTINUATION OF PROCEEDING HAS NOT BEEN SHOWN TO BE DAMAGING TO PETITIONERS HEALTH. ***WALTON B/CING CO.*** 39FCC2D1074

RENEWALS

COMMISSIONER JOHNSON DISSENT FROM FCC ACTION RENEWING LICENSES IN THE FLORIDA-PUERTO RICO-VIRGIN ISLANDS RENEWAL GROUP. ***FLORIDA RENEWALS-1973*** 39FCC2D1035

RENEWALS SHORT TERM

RENEWAL OF LICENSES GRANTED FOR 1 YEAR PERIOD ONLY TO ALLOW FOR EARLIER REVIEW OF OPERATIONS SINCE LICENSEE HAS IN THE PAST BEEN CITED FOR NUMEROUS VIOLATIONS. ***PACIFIC B/CING CORP.*** 39FCC2D1055

REPORTS FAILURE TO FILE

APPLICATION FOR AM STATION GRANTED SINCE FAILURE TO PUBLISH LOCAL NOTICE AT REQUIRED TIME (SEC. 1.580(C)), FAILURE TO HAVE COPY FOR PUBLIC INSPECTION, AND FAILURE TO REPORT A POWER INCREASE APPLICATION (SEC. 1.514) ARE NOT SUFFICIENTLY SERIOUS TO DISQUALIFY THE APPLICANT. ***FRANKLIN BROADCASTING CO.*** 39FCC2D0032

REPORTS INCOMPLETE

MOTION TO ENLARGE ISSUES TO INCLUDE FAILURE TO REPORT BROADCAST INTEREST DENIED SINCE OMISSIONS ARE DE MINIMUS AND INSIGNIFICANT. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1094

REVIEW

APPLICATION FOR REVIEW OF DECISION 34FCC2D660 AND FOR LEAVE TO FILE SUPPLEMENTAL STATEMENTAL STATEMENT GRANTED AND MATTER SCHEDULED FOR ORAL ARGUMENT. ***ALABAMA MICROWAVE, INC.*** 39FCC2D0629

REVIEW BOARD, INTERLOCUTORY MATTERS

REQUESTED WAIVER OF SEC. 1.106(A), DISALLOWING RECONSIDERATION OF INTERLOCULATORY RULINGS BY THE REVIEW BOARD, DENIED SINCE NO JUSTIFICATION FOR THE WAIVER HAS BEEN PRESENTED. ***SALEM B/CING CO., INC.*** 39FCC2D0178

REVOCATION

PETITION FOR RECONSIDERATION OF AN ORDER DEFERRING ACTION ONAPPLICATION 35 FCC2D776 , PENDING RESOLUTION OF A REVOCATION PROCEEDING INVOLVING A COMPETING APPLICATION FOR RENEWAL AND DESIGNATION FOR HEARING, DENIED SINCE THE REVOCATION PROCEEDING IS NEAR COMPLETION. ***RADIO STAMFORD, INC.*** 39FCC2D0084

RADIO STAMFORD, INC. DECISION DENYING RECONSIDERATION OF 35 FCC 2D 776 ORDER DENYING DESIGNATION OF COMPETING APPLICATION FOR COMPARATIVE HEARING HAS APPEAL PENDING, RADIO STAMFORD, INC. V. FCC D.C. CIR. 73-1201 . 39FCC2D0084

SIGNALS PRIORITY OF

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED FOR ASHORT TERM, SUBJECT TO A SELECTION OF WHICH INDEPENDENT STATION IT WILL CARRY, SINCE IT IS NOT CLEAR WHETHER THE FRANCHISING AUTHORITY HAS CONTROL OVER SUBSCRIBER RATES. REQUESTED WAIVER OF 76.61(B)(2) TO ALLOW CARRIAGE OF 4 RATHER THAN 3 INDEPENDENT SIGNALS DENIED. ***SARATOGA CABLE TV CO., INC.*** 39FCC2D0611

SILENT STATION

APPLICATION FOR WAIVERS, FOR ACCEPTANCE, AND FOR SPECIAL TEMPORARY AUTHORITY TO OPERATE SILENT AM AND FM STATIONS GRANTED AND SECS. 1.516(C), 1.517(C) ARE WAIVED TO ALLOW EARLY CONSIDERATION OF PERMANENT AUTHORIZATION PURSUANT TO SEC. 309(F) SINCE EXTRAORDINARY CIRCUMSTANCES EXIST TO RESTORE THE ONLY LOCAL BROADCAST SERVICES AVAILABLE. ***MID-MICHIGAN B/CING CORP.*** 39FCC2D0173

SPACE COMMUNICATIONS

PART 2 TABLE OF FREQUENCY ALLOCATIONS AMENDED TO CONFORM TO A PRACTICABLE EXTENT TO THE GENEVA RADIO REGULATIONS, AS REVISED BY THE SPACE WARC. ***SPACE WARC, AMEND. OF PART 2*** 39FCC2D0959

SPECIAL INDUSTRIAL RADIO SERVICE, FREQUENCIES

PETITION FOR NOTICE OF PROPOSED RULE MAKING TO AMEND PARTS 8, 9, 91, AND 93 RELATING TO USE OF FREQUENCY PAIR AND AMENDING SECTION 91.504 TO ALLOW ITINERANT FIXED OPERATIONS GRANTED. ***FREQUENCY PAIR 451.800456.800 MHZ*** 39FCC2D0152

SPECIAL RELIEF

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND FOR PARTIAL WAIVER OF SEC. 76.31 GRANTED, SINCE THERE IS NO APPROPRIATE FRANCHISING AUTHORITY BUT GRANT OF RIGHT OF WAY IS ACCEPTABLE ALTERNATE PROPOSAL, NO AFFIRMATIVE ALLEGATIONS OF SHOTCOMINGS BY APPLICANT WERE ALLEGED IN OPPOSITION, AND THERE HAS BEEN SUBSTANTIAL COMPLIANCE (SEC. 76.7). ***SUN VALLEY CABLE COMM.*** 39FCC2D0105

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND PETITION FOR SPECIAL RELIEF GRANTED TO ALLOW WAIVER OF SEC. 76.5 AND CONSIDERATION OF PROPOSED SERVICE AREA AS WHOLLY OUTSIDE ALL MAJOR AND SMALLER TELEVISION MARKETS. ***VILLAGE CATV, INC.*** 39FCC2D0288

PETITION FOR SPECIAL RELIEF REQUESTING CORRECTION OF INADVERTANT OPERATION WITHOUT AUTHORIZATION GRANTED SINCE TO DENY WOULD DEPRIVE SUBSCRIBERS TO PROGRAMMING TO WHICH THEY ARE ACCUMSTOMED WITHOUT GOOD REASON ***LAFOURCHE COMM., INC.*** 39FCC2D0472

SPECIAL TEMPORARY AUTHORIZATION

PETITION FOR RECONSIDERATION OF DECISION GRANTING EMERGENCY SPECIAL TEMPORARY AUTHORITY PURSUANT TO 309(F) TO CONSTRUCT AND OPERATE A UHF TRANSLATOR STATION, PENDING ACTION ON APPLICATION FOR REGULAR AUTHORITY, DENIED AND EMERGENCY AUTHORITY REAFFIRMED, SINCE NO SHOWING OF PUBLIC DETRIMENT, PRIVATE OR ECONOMIC INJURY, HAS BEEN MADE. ***TELEMUNDO, INC.*** 39FCC2D0522

SPECIALIZED COMMON CARRIER SERVICES

PETITION FOR RECONSIDERATION OF RESTRICTIVE CONDITIONS IN GRANT OF AUTHORITY TO SUPPLEMENT EXISTING INTERSTATE AND FOREIGN SPECIALIZED COMMUNICATIONS SERVICES GRANTED, AND CONDITIONS DELETED, SINCE THEY NO LONGER APPEAR NECESSARY IN LIGHT OF MORE RECENT POLICY DETERMINATIONS AND RULE CHANGES IN THE CATV FIELD. ***COMMUNICATIONS INTERSTATE OR FOREIGN*** 39FCC2D0131

SPONSORS IDENTIFICATION OF

FORFEITURE OF 3,000 ORDERED FOR REPEATED VIOLATIONS OF SEC 317 AND SEC. 73.119 SPONSORSHIP IDENTIFICATION OF COMMERCIAL ANNOUNCEMENTS . ***METRO COMMUNICATIONS, INC.*** 39FCC2D1053

SPONSORS IDENTIFICATION OF, LICENSEE OBLIGATION

APPLICATION FOR MITIGATION OF FORFEITURE 37FCC2D518 FOR VIOLATION OF SECS. 317 AND 73.645 INVOLVING SPONSOR IDENTIFICATION AND SEC. 73.1205 FOR CLIPPING CRAWLS CLASSIFIED AS ADVERTISING, DENIED SINCE THE ACTS WERE REPEATED FREQUENTLY. ***CHANNEL 13 OF LAS VEGAS, INC.*** 39FCC2D0128

SPONSORS IDENTIFICATION OF, SANCTIONS

FORFEITURE FOR VIOLATING OF SEC. 73.112(A)(2)(II), (LOGGING THE DURATION OF COMMERCIALS), AND SECS. 73.119 AND 317 FOR FAILURE TO GIVE THE REQUIRED SPONSOR IDENTIFICATION SINCE THE VIOLATIONS ARE REPORTED. ***GROSSCO, INC.*** 39FCC2D0589

SPORTS CABLECASTING

INTERPRETIVE RULING THAT UNDER SECTION 76.59 (D)(2) CABLE SYSTEMS MAY NOT IMPORT A DISTANT NETWORK TELEVISION STATION NOT NORMALLY CARRIED ON THE SYSTEM, BROADCASTING A BLACKED OUT SPORTS PROGRAM. ***SCRIPPS-HOWARD B/CING CO.*** 39FCC2D0502

STAFF ADEQUACY

PETITION TO ENLARGE ISSUES GRANTED IN PART TO INCLUDE AN ISSUE AS TO FAILURE TO REPORT REQUISITE INFORMATION (SEC. 1.514(A)), AND THE EFFECT IF ANY ON THE APPLICATION SINCE THERE APPEARS TO BE A FAILURE TO LIST ALL LIABILITIES. REQUEST FOR STAFFING AND ANTENNA SITE ISSUES, DENIED. ***COLORADO WEST B/CING INC.*** 39FCC2D0407

STAFF PROPOSALS

PETITION TO ENLARGE ISSUES REQUESTING ADDITION OF STAFFING AND SUBURBAN ISSUES RECOMPETITOR, DENIED SINCE PETITIONER HAS FAILED TO RAISE ALLEGATIONS SUFFICIENT TO WARRANT ENLARGEMENT. ***COLORADO WEST B/CING, INC.*** 39FCC2D0691

STANDARD BROADCAST STATIONS, FREQUENCIES

PART 73 OF THE RULES AMENDED REGARDING AM STATION ASSIGNMENTSTANDARDS AND THE RELATIONSHIP BETWEEN THE AM AND FM BROADCAST SERVICES. ***B/CST STATION ASSIGNMENT STANDARDS*** 39FCC2D0645

STANDING BEFORE COMMISSION

PETITION TO DENY ASSIGNMENT OF LICENSE BY RECEIVER DENIED SINCE THE COURT WHICH HAS JURISDICTION OF THE RECEIVER HAS APPROVED THE ASSIGNMENT SUBJECT TO COMMISSION APPROVAL, AND PETITIONER, AN UNSUCCESSFUL PROSPECTIVE ASSIGNEE, HAS NO STANDING BEFORE THE COMMISSION. (SEC. 310(B)). ***GORMAN, LEON P., JR. RECEIVER*** 39FCC2D0037

STATE COMMISSIONS, COOPERATION WITH

COMPLAINT OF EMPLOYMENT DISCRIMINATION DISMISSED AND RENEWALGRANTED SUBJECT TO FURTHER ACTION PENDING OUTCOME OF EMPLOYMENT DISCRIMINATION PROCEEDING BEFORE THE STATE HUMAN RELATIONS COMMISSION. ***PRIME TIME ACCESS RULE*** 39FCC2D0077

STATION LOCATION, CHANGE OF

APPLICATION TO CHANGE LOCATION AND CLASS OF STATION FROM CLASS II TO CLASS III DENIED SINCE THE PROPOSED OPERATION WOULD LOSE A PORTION OF ITS BROADCAST DAY BY DISCONTINUANCE OF PRE-SUNRISE OPERATION, AND THE 307(B) ISSUE (EQUITABLE DISTRIBUTION OF BROADCAST FACILITIES) IS CONTROLLING. COMPETING APPLICATION GRANTED. ***SADOW, JAY*** 39FCC2D0808

STAY IRREPARABLE INJURY

PETITION TO STAY ORDER DELETING A CONDITION IMPOSED 14 FCC 2D 870 GRANTED PENDING FINAL DECISION OF PETITIONS FOR RECONSIDERATION OF THAT ORDER SINCE THE FACTUAL BASIS OF THE ORDER APPEARS IN ERROR AND IRREPARABLE PREJUDICE MAY RESULT. ***UNITED TELEVISION, INC.*** 39FCC2D0622

STAY PENDING APPEAL

MOTION FOR STAY OF MEMORANDUM OPINION AND ORDER DENYING REQUEST FOR JOINT INTERIM AUTHORITY TO OPERATE STATION FACILITIES PENDING COMPARATIVE HEARING GRANTED IN PART TO ALLOW APPEAL TO D. C. CIRCUIT COURT OF APPEALS. ***NORTHEAST OKLA. B/CING, INC.*** 39FCC2D0484

STAY PENDING OUTCOME OF OTHER PROCEEDING

PETITION TO STAY ORDER DELETING A CONDITION IMPOSED 14 FCC 2D 870 GRANTED PENDING FINAL DECISION OF PETITIONS FOR RECONSIDERATION OF THAT ORDER SINCE THE FACTUAL BASIS OF THE ORDER APPEARS IN ERROR AND IRREPARABLE PREJUDICE MAY RESULT. ***UNITED TELEVISION, INC.*** 39FCC2D0622

STRIKE APPLICATION ISSUE

APPLICATION FOR RENEWAL OF LICENSE GRANTED UPON FINDING THATPRINCIPALS OF LICENSEE WERE NOT INVOLVED IN A STRIKE APPLICATION AND THAT MISSTATEMENTS IN TESTIMONY WERE NOT PERJURY BUT A FAULTY SHADING OF RECOLLECTIONS. ***GRENCO, INC.*** 39FCC2D0732

SUBMARINE CABLES

JOINT APPLICATION REQUESTING MODIFICATION OF CANTAT-11 ORDERGRANTING CONSTRUCTION AND OPERATION OF TAT-6 AND SUBMARINE CABLE BETWEEN U.S. AND FRANCE AND SUBMARINE CABLE BETWEEN CANADA AND UNITED KINGDOM (35FCC2D801) GRANTED IN PART AND DENIED IN PART. ***AMER. TEL. & TEL. CO.*** 39FCC2D0865

SUBPOENA MOTION TO QUASH

NOTICE TO APPEAR BEFORE PRESIDING OFFICER TO TESTIFY OR TO FILE AN APPEAL IS ISSUED UPON DENIAL OF PETITION TO QUASH SUBPOENA. ***SUHLER, LESTER F.*** 39FCC2D0104

SUBURBAN COMMUNITY 307(B) ISSUE

APPLICATION PREVIOUSLY DISMISSED (27FCC2D66) ON DUOPOLY RULE(SEC. 73.35) REINSTATED AND DESIGNATED FOR HEARING ON ISSUES AS TO FINANCIAL. AREAS AND POPULATIONS, 307(B), OVERLAP, AND COMMUNITY NEEDS. REQUESTS FOR WAIVER OF SECS. 1.580(B), 1.580(B), 1.569(B)(2)(I) (TRANSMITTER SITE LOCATION) AND SECS. 1.571(C) AND 1.227(B)(1) ARE GRANTED. ***QUINNIPIAC VALLEY SERVICE, INC.*** 39FCC2D0948

MOTION TO ENLARGE ISSUES TO INCLUDE SUBURBAN AND CROSS OWNERSHIP ISSUES DENIED FOR INSUFFICIENCY OF ALLEGATIONS. EXISTING SUBURBAN COMMUNITY 307(B) ISSUE IS BROADENED TO INCLUDE DETERMINATION WITH RESPECT TO SANTA CLARA, CALIF. ***ST. CROSS B/CING, INC.*** 39FCC2D0970

SUBURBAN COMMUNITY 307(B) ISSUE

APPLICATION FOR AN INCREASE IN DAYTIME POWER DENIED SINCE THE SUBURBAN COMMUNITY 307(B) PRESUMPTION OF SERVICE HAS NOT BEEN SATISFACTORILY REBUTTED. ***WHJB, INC.*** 39FCC2D0296

SUBURBAN ISSUE

PETITION TO ENLARGE ISSUES REQUESTING ADDITION OF STAFFING AND SUBURBAN ISSUES RECOMPETITOR, DENIED SINCE PETITIONER HAS FAILED TO RAISE ALLEGATIONS SUFFICIENT TO WARRANT ENLARGEMENT. ***COLORADO WEST B/CING, INC.*** 39FCC2D0691

MOTION TO ENLARGE ISSUES IN A COMPARATIVE PROCEEDING TO INCLUDE A SUBURBAN ISSUE GRANTED SINCE THE EDGEFIELD-SALUDA TEST AS TO SUBSTANTIAL SHOWING HAS BEEN MET. ***ST. CROSS B/CING, INC.*** 39FCC2D1067

SUNSET

APPLICATION FOR NEW AM STATION GRANTED AFTER REMAND AND SUPPLEMENTAL INITIAL DECISION ON ISSUES AS TO PRINCIPALS ALLEGED VIOLATIONS OF AFTER HOURS OPERATIONS, SINCE VIOLATIONS WERE DUE TO INADVERTANCE AND INEXPERIENCE. ***DUPAGE COUNTY B/CING, INC.*** 39FCC2D0885

TABLE OF ASSIGNMENT, FM

FM TABLE OF ASSIGNMENTS (SEC. 73.202(B)) AMENDED BY ADDING ATHIRD CHANNEL TO LA CROSSE, WIS. SINCE IN THE PUBLIC INTEREST. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D0147

FM TABLE OF ASSIGNMENTS (SEC. 73.202(B)) IS AMENDED BY ASSIGNING FIRST CHANNELS TO CHATSWORTH, GA., ELDORADO, ILL., CAMDEN, TENN. AND UNION CITY, TENN. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D0150

FM TABLE OF ASSIGNMENTS (SEC. 73.202(B)) AMENDED WITH RESPECT TO CRYSTAL RIVER AND GAINSVILLE, FLORIDA, AND CHARLES CITY, HAMPTON AND PELLA, IOWA. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D0452

FM TABLE OF ASSIGNMENTS AMENDED TO ASSIGN NEW FM CHANNELS TOJESUP, GA., ORLEANS, MASS., AND MIDLAND, MICH. A REQUEST TO REASSIGN CHANNEL 240A FROM KILGORE TO GLADEWATER, TEX. IS DENIED SINCE SUCH ACTION WOULD PRECLUDE FUTURE EDUCATIONAL FM FACILITIES IN THE AREA. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D0717

AMENDMENT OF FM TABLE OF ASSIGNMENTS, AS REPORTED AT 37FCC 2D54 AFFIRMED AND CHANNEL 232A ASSIGNED TO AVALON, N.J. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D0725

FM TABLE OF ASSIGNMENTS (SEC. 73.202(B)) AMENDED TO PROVIDE FIRST LOCAL SERVICE TO UNION SPRINGS, ALA. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D0933

FM TABLE OF ASSIGNMENTS (SEC. 73.202(B)) AMENDED TO PROVIDE CHANNELS 280A AND 292A TO CRAWFORDSVILLE, IND. REQUEST FOR ASSIGNMENT OF THOSE CHANNELS TO WEST LAFAYETTE, IND., DENIED. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D1027

TABLE OF FREQUENCY ALLOCATIONS

PART 2 TABLE OF FREQUENCY ALLOCATIONS AMENDED TO CONFORM TO A PRACTICABLE EXTENT TO THE GENEVA RADIO REGULATIONS, AS REVISED BY THE SPACE WARC. ***SPACE WARC, AMEND. OF PART 2*** 39FCC2D0959

TARIFF DISCRIMINATION

PROPOSED REVISIONS OF TARIFF, DEALING WITH UNMIXED PRIVATE LINE SERVICE, SUSPENDED DUE TO QUESTIONABLE LAWFULNESS OF THE REVISIONS, AND INVESTIGATION ORDERED TO DETERMINE WHETHER LAWFUL AND WHAT CORRECTIVE MEASURES SHOULD BE TAKEN. (SECS. 201(B) AND 202(A)). ***AMER. TEL. & TEL. CO.*** 39FCC2D0631

TARIFF DISCRIMINATORY

APPLICATION FOR ASSIGNMENT OF LICENSE IN THE DOMESTIC LAND MOBILE RADIO SERVICE GRANTED SINCE NO FACTUAL CONTENTIONS TO BASE A CLAIM OF DISCRIMINATORY RATES OR PUBLIC INCONVENIENCE HAVE BEEN MADE TO WARRANT A HEARING UNDER 309 (D)(2). ***NORTHERN MOBILE TELEPHONE CO.*** 39FCC2D0608

TARIFF INVESTIGATION

TARIFF SCHEDULES PROPOSED BY A.T & T. TRANSMITTAL 11618 FCC 259 AND 260 AND WESTERN UNION TRANSMITTAL 6772 FCC NO. 254 AFFECTING WIDE AREA TELEPHONE AND PRIVATE LINE SERVICES ORDERED INVESTIGATED TO DETERMINE THEIR LAWFULNESS. ***AMER. TEL. & TEL.—LONG LINES DEPT*** 39FCC2D0637

PROPOSED REVISIONS OF TARIFF, DEALING WITH UNMIXED PRIVATE LINE SERVICE, SUSPENDED DUE TO QUESTIONABLE LAWFULNESS OF THE REVISIONS, AND INVESTIGATION ORDERED TO DETERMINE WHETHER LAWFUL AND WHAT CORRECTIVE MEASURES SHOULD BE TAKEN. (SECS. 201(B) AND 202(A)). ***AMER. TEL. & TEL. CO.*** 39FCC2D0631

TARIFF REQUIREMENTS

PETITION FOR PARTIAL RECONSIDERATION OF ORDER FOR FORFEITUREFOR VIOLATION OF SECTION 203(C) (35 FCC 2D 707) DENIED, SINCE A CARRIER MAY NOT COLLECT ANY PAYMENT THAT IS NOT SPECIFIED IN THE TARIFF SCHEDULE THEN IN EFFECT. ***CRUCES CABLE CO., INC.*** 39FCC2D0552

TARIFF SUSPENSION

PETITIONS FOR SUSPENSION AND INVESTIGATION AND FOR REJECTIONOR SUSPENSION IN MATTER OF REVISION OF TARIFF FCC NO. 240 AND TWX TARIFF FCC NO. 258 GRANTED TO THE EXTENT THAT AN INVESTIGATION IS ORDERED INTO THE LAWFULNESS OF THE TARIFFS, AND THEY ARE SUSPENDED PENDING THAT DECISION. ***WESTERN UNION TELEGRAPH CO.*** 39FCC2D0977

TARIFF, HEARING DESIGNATED

PETITION FOR RECONSIDERATION OF THE LAWFULNESS OF TARIFF RATES CHARGED (35 FCC 2D 907) IS DENIED, SINCE NO NEW FACTS ARE PRESENTED AND AN INVESTIGATION AND HEARING HAVE BEEN ORDERED. ***CRUCES CABLE CO., INC.*** 39FCC2D0554

TAT-6

JOINT APPLICATION REQUESTING MODIFICATION OF CANTAT-11 ORDERGRANTING CONSTRUCTION AND OPERATION OF TAT-6 AND SUBMARINE CABLE BETWEEN U.S AND FRANCE AND SUBMARINE CABLE BETWEEN CANADA AND UNITED KINGDOM (35FCC2D801) GRANTED IN PART AND DENIED IN PART. ***AMER. TEL. & TEL. CO.*** 39FCC2D0865

TAX CERTIFICATE

TAX CERTIFICATE ISSUED FOR SALE OF INTEREST IN A CABLE TELEVISION SYSTEM PURSUANT TO THE PROHIBITIONS OF 76.501 AGAINST CROSS OWNERSHIP OF CABLE SYSTEMS AND TELEVISION BROADCAST STATIONS. ***COX-COSMOS, INC.*** 39FCC2D0139

APPLICATION FOR TAX CERTIFICATE GRANTED SINCE DIVESTITURE WAS REQUIRED BY SEC. 64.601 TO ELIMINATE CROSS OWNERSHIP, AND INTERESTS IN BOTH LAND-LINE COMMON CARRIER TELEPHONE SERVICES AND CABLE TELEVISION SYSTEMS IN ONE AREA MEETS THE REQUIREMENTS OF SEC. 1071 OF THE INTERNAL REVENUE CODE. ***MID-TEXAS COMM. SYSTEMS, INC.*** 39FCC2D0175

APPLICATION FOR ISSUANCE OF TAX CERTIFICATE FOR SALE OF INTEREST IN A CABLE TV SYSTEM BY A BROADCAST LICENSEE GRANTED AND REQUESTED CERTIFICATE ISSUED TO CONFORM WITH DIVESTITURE REQUIREMENTS OF SEC. 76.501. ***FISHERS BLEND STATION, INC.*** 39FCC2D0927

REQUEST FOR TAX CERTIFICATE IN SALE OF STATION DENIED SINCE REASON THAT SALE WAS PROMPTED BY POSSIBLE RULE CHANGES DOES NOT INDICATE THAT THERE HAS IN FACT BEEN A CHANGE IN FCC POLICY. ***ILLINOIS VALLEY COMMUNICATIONS, INC.*** 39FCC2D1048

TELEGRAPH SERVICE

INVESTIGATION INSTITUTED INTO THE POSSIBLE ESTABLISHMENT OF AN INTERCONNECTION BETWEEN RCA GLOBAL COMMUNICATIONS TELEGRAPH MESSAGE AND TELEX SYSTEM ON GUAM AND ITT WORLD COMMUNICATIONS TELEGRAPH MESSAGE AND TELEX SYSTEM. ***ITT WORLD COMMUNICATIONS, INC.*** 39FCC2D0778

TELEVISION INTER-CITY RELAY STATIONS

REQUEST FOR WAIVER OF SEC. 74.631(D) CONCERNING THE MULTIPLEXING OF ADDITIONAL EDUCATIONAL PROGRAM MATERIAL GRANTED, PROVIDED THE TELEVISION INTERCITY RELAY SYSTEM DOES NOT OPERATE SOLELY TO RELAY THIS SIGNAL. ***WGBH EDUCATIONAL FOUNDATION*** 39FCC2D0115

TELEX

INVESTIGATION INSTITUTED INTO THE POSSIBLE ESTABLISHMENT OF AN INTERCONNECTION BETWEEN RCA GLOBAL COMMUNICATIONS TELEGRAPH MESSAGE AND TELEX SYSTEM ON GUAM AND ITT WORLD COMMUNICATIONS TELEGRAPH MESSAGE AND TELEX SYSTEM. ***ITT WORLD COMMUNICATIONS, INC.*** 39FCC2D0778

TERMINATION OF PROCEEDING

PREVIOUSLY ISSUED ORDER SUSPENDING RADIOTELEPHONE THIRD CLASS OPERATOR PERMIT DISMISSED UPON REQUEST FOR HEARING, AND PROCEEDING TERMINATED AS BEST SERVING THE PUBLIC INTEREST. ***TIPTON, BEN LLOYD, III*** 39FCC2D1073

TIME EXTENSION OF

PETITION FOR EXTENSION OF TIME FOR INITIAL COMPLIANCE WITH 76.601 CABLE TELEVISION PERFORMANCE TESTS GRANTED TO ALLOW FURTHER TIME FOR DISSEMINATION OF TESTING TECHNIQUES, ACQUISITION OF EQUIPMENT, AND TRAINING OF ENGINEERS. ***CABLE TV PERFORMANCE TESTS*** 39FCC2D0126

PETITION FOR RECONSIDERATION REQUESTING EXTENSION OF WAIVERSOF SECS. 2.805 AND 15.7 PERMITTING MARKETING OF CLASS I TV DEVICES AND SEC. 15.407 REQUIRING SAID DEVICES TO BE EQUIPPED WITH A RECEIVER TRANSFER SWITCH HAVING A 60 DB ISOLATION, GRANTED SINCE TIMETABLES PRESENTED INDICATE UNDUE HARDSHIP WOULD RESULT TO MANUFACTURERS WITHOUT EXTENSION OF WAIVERS. ***CLASS I TV DEVICE*** 39FCC2D0689

REQUEST FOR EXTENSION OF TIME IN WHICH TO FILE A PETITION TODENY RENEWAL OF LICENSE GRANTED, AND SEC. 1.580(I) WAIVED. ***CITIZENS COMMUNICATIONS CENTER*** 39FCC2D0993

TIMELINESS

APPLICATIONS FOR CATV CERTIFICATE OF COMPLIANCE SEC 76.31 GRANTED SINCE THE PUBLIC INTEREST DOES NOT REQUIRE A SPHERE OF INFLUENCE TO PREVENT IMPORTATION OF IN-STATE EDUCATIONAL STATIONS AND OBJECTIONS WERE UNTIMELY RAISED. ***SEMINOLE CABLEVISION, INC.*** 39FCC2D0096

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE SEC. 76.31 GRANTED SINCE THE PUBLIC INTEREST DOES NOT REQUIRE A SPHERE OF INFLUENCE TO PREVENT IMPORTATION OF IN-STATE EDUCATIONAL STATIONS AND THE OBJECTIONS WERE NOT TIMELY RAISED. ***SEMINOLE CABLEVISION, INC.*** 39FCC2D0098

APPLICATIONS FOR REVIEW OF DECISION 33FCC2D749 DENYING APPLICATIONS AND FOR LEAVE TO AMEND, DENIED SINCE FILED LATE AND EVIDENCE TENDERED WAS READILY AVAILABLE BEFORE ISSUANCE OF INITIAL DECISION. ***STEPHENSON, HARRY D. AND ROBERT R.*** 39FCC2D0279

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE IS GRANTED SINCE PROPER NOTICE OF PROPOSAL TO ADD CHANNELS WAS SERVED UNDER FORMER SECTION 74.1105 AND NO OBJECTIONS WERE RAISED AND THUS THE PROPOSED SIGNALS BECAME AUTHORIZED, EVEN THOUGH NOT YET IN OPERATION, AND GRANDFATHERED UNDER SECTION 76.65. ***FORT SMITH TV CABLE CO.*** 39FCC2D0573

TOWER TALL

APPLICATION FOR A JOINT TALL TOWER FOR VHF STATIONS DENIED IN VIEW OF UHF IMPACT BASED ON A REALISTIC POTENTIAL FOR UHF DEVELOPMENT IN THE AREA BY REASON OF AN ABC NETWORK WHITE AREA. ***SOUTH CAROLINA EDUC. T.V. COMM.*** 39FCC2D0180

RECONSIDERATION OF SOUTH CAROLINA EDUC. T.V. COMM. DECISION,DENYING APPLICATION FOR JOINT TALL TOWER, DENIED (FCC 73- 508) AND APPEAL OF LATTER ORDER PENDING. SOUTH CAROLINA EDUC. T.V. COMM. V. F.C.C. (D.C. CIR. 73-1679). 39FCC2D0180

TRANSFER OF CONTROL

APPLICATION FOR TRANSFER OF CONTROL AND FOR WAIVER OF SECTIONS 73.35, 73.240 AND 73.636 ONE-TO-A-MARKET WHERE ACQUISITION WILL RESULT IN COMMON OWNERSHIP OF AURAL AND TELEVISION FACILITIES IN THE SAME MARKET, GRANTED AND TRANSFER APPROVED SINCE IT FURTHERS DIVERSITY IN MASS MEDIA. ***R. W. PAGE CORPORATION*** 39FCC2D0487

REQUEST FOR EXTENSTION OF TIME IN WHICH TO FILE PETITION TO DENY IN TRANSFER OF CONTROL PROCEEDING, GRANTED SINCE TRANSFER APPLICATION WAS INCOMPLETE AS FILED, THEREBY PREVENTING FULL REVIEW UNTIL CORRECTIVE AMENDMENT WAS FILED. ***GILBERT, LEE, J. L. & K. E. PUTBRESE*** 39FCC2D1043

TRANSFER OF CONTROL, UNAUTHORIZED

PETITION FOR RECONSIDERATION OF REVIEW BOARD DECISION (37 FCC2D686) DENYING APPLICATION TO OPERATE FORMER FACILITIES OF KICM ON BASIS OF UNAUTHORIZED TRANSFER OF CONTROL, INTRODUCTION OF EVIDENCE, FIANACIAL, MISREPRESENTATION, SEC. 1.65 AND EX PARTE ISSUES, DENIED SINCE SAME ADVERSE DETERMINATION ON THE ISSUES EXISTS. ***VOICE OF REASON, INC.*** 39FCC2D0847

TRANSLATOR UHF

PETITION REQUESTING MODIFICATION OF STATION LICENSE BY REMOVAL OF PROGRAM EXCLUSIVITY CONDITION (22 FCC 2D 950) DENIED, SINCE MEASUREMENT DATA SHOWS THAT STRONG SIGNALS WERE AVAILABLE IN THE AREA FROM BOTH THE TRANSLATOR AND THE TELEVISION STATION. ***WGAL TELEVISION, INC.*** 39FCC2D0627

APPLICATION FOR NEW UHF TELEVISION TRANSLATOR STATION GRANTED SINCE THE SERVICE HAD BEEN PROVIDED FOR MANY YEARS THROUGH ANOTHER STATION, AND THE PRESENT APPLICATION IS BUT A CONTINUATION OF THAT SERVICE. NO ALLEGATIONS OF FACT HAVE BEEN ADVANCED TO SHOW ADVERSE IMPACT ON EXISTING STATION. ***TELEMUNDO, INC.*** 39FCC2D0829

TRANSMITTER LOCATION

APPLICATION PREVIOUSLY DISMISSED (27FCC2D66) ON DUOPOLY RULE(SEC. 73.35) REINSTATED AND DESIGNATED FOR HEARING ON ISSUES AS TO FINANCIAL, AREAS AND POPULATIONS, 307(B), OVERLAP, AND COMMUNITY NEEDS. REQUESTS FOR WAIVER OF SECS. 1.580(B), 1.580(B), 1.569(B)(2)(I) (TRANSMITTER SITE LOCATION) AND SECS. 1.571(C) AND 1.227(B)(1) ARE GRANTED. ***QUINNIPIAC VALLEY SERVICE, INC.*** 39FCC2D0948

TRANSMITTER SITE

APPEAL FROM ORDER GRANTING PETITION FOR LEAVE TO AMEND APPLICATION TO CHANGE THE TRANSMITTER SITE, DENIED SINCE THE AMENDMENT IS NOT MAJOR BECAUSE IT NEITHER ENLARGES THE SERVICE CONTOUR, SIGNIFICANTLY CHANGES THE LOCATION OF POINTS OF COMMUNICATION OR MATERIALLY ALTERS PROPOSED SERVICE. ***EMPIRE COMM. CO.*** 39FCC2D0143

APPLICATION FOR A JOINT TALL TOWER FOR VHF STATIONS DENIED IN VIEW OF UHF IMPACT BASED ON A REALISTIC POTENTIAL FOR UHF DEVELOPMENT IN THE AREA BY REASON OF AN ABC NETWORK WHITE AREA. ***SOUTH CAROLINA EDUC. T.V. COMM.*** 39FCC2D0180

RECONSIDERATION OF SOUTH CAROLINA EDUC. T.V. COMM. DECISION,DENYING APPLICATION FOR JOINT TALL TOWER, DENIED (FCC 73- 508) AND APPEAL OF LATTER ORDER PENDING. SOUTH CAROLINA EDUC. T.V. COMM. V. F.C.C. (D.C. CIR. 73-1679). 39FCC2D0180

MOTION TO ENLARGE ISSUES IN PROCEEDING INVOLVING RENEWAL ANDNEW APPLICANTS GRANTED AS TO REQUESTED NETWORK AFFILIATION AND FINANCIAL QUALIFICATIONS ISSUES AND DENIED AS TO REPORTING CRIMINAL VIOLATIONS, TRANSMITTER SUITABILITY, EQUAL EMPLOYMENT, PUBLIC INSPECTION, INEPTNESS, SEC. 1.514, AND 1.53(B) ISSUES. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1077

TUNING SYSTEM, UHF

REQUEST FOR WAIVER OF THE COMPARABLE TUNING RULES (SEC. 15.68) GRANTED SINCE PETITIONER IS A SMALL FIRM AND HAS MADE GOOD FAITH EFFORTS TO COMPLY. ***ANDREA RADIO CORP.*** 39FCC2D0002

TV OPERATION WITHIN AREA OF LOCAL EDUCATIONAL STATION

APPLICATIONS FOR CATV CERTIFICATE OF COMPLIANCE SEC. 76.31 GRANTED SINCE THE PUBLIC INTEREST DOES NOT REQUIRE A SPHERE OF INFLUENCE TO PREVENT IMPORTATION OF IN-STATE EDUCATIONAL STATIONS AND OBJECTIONS WERE UNTIMELY RAISED. ***SEMINOLE CABLEVISION, INC.*** 39FCC2D0096

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE SEC. 76.31 GRANTED SINCE THE PUBLIC INTEREST DOES NOT REQUIRE A SPHERE OF INFLUENCE TO PREVENT IMPORTATION OF IN-STATE EDUCATIONAL STATIONS AND THE OBJECTIONS WERE NOT TIMELY RAISED. ***SEMINOLE CABLEVISION, INC.*** 39FCC2D0098

TV PERFORMANCE TESTS

PETITION FOR EXTENSION OF TIME FOR INITIAL COMPLIANCE WITH 76.601 CABLE TELEVISION PERFORMANCE TESTS GRANTED TO ALLOW FURTHER TIME FOR DISSEMINATION OF TESTING TECHNIQUES, ACQUISITION OF EQUIPMENT, AND TRAINING OF ENGINEERS. ***CABLE TV PERFORMANCE TESTS*** 39FCC2D0126

TWX

PETITIONS FOR SUSPENSION AND INVESTIGATION AND FOR REJECTIONOR SUSPENSION IN MATTER OF REVISION OF TARIFF FCC NO. 240 AND TWX TARIFF FCC NO. 258 GRANTED TO THE EXTENT THAT AN INVESTIGATION IS ORDERED INTO THE LAWFULNESS OF THE TARIFFS, AND THEY ARE SUSPENDED PENDING THAT DECISION. ***WESTERN UNION TELEGRAPH CO.*** 39FCC2D0977

TYPE ACCEPTANCE

PART 1 AMENDED TO PROVIDE FOR PREPAYMENT OF COMBINED FILING AND GRANT FEE WITH AN APPLICATION FOR CERTIFICATION OR TYPE ACCEPTANCE. ***SCHEDULE OF FEES*** 39FCC2D0956

UHF IMPACT

APPLICATION FOR A JOINT TALL TOWER FOR VHF STATIONS DENIED IN AREA OF UHF IMPACT BASED ON A REALISTIC POTENTIAL FOR UHF DEVELOPMENT IN THE AREA BY REASON OF AN ABC NETWORK WHITE AREA ***SOUTH CAROLINA EDUC. T.V. COMM.*** 39FCC2D1180

RECONSIDERATION OF SOUTH CAROLINA EDUC T V COMM DEC'S ON DENYING APPLICATION FOR JOINT TALL TOWER DENIED (FCC 73- 508, AND APPEAL OF LATTER ORDER PENDING SOUTH CAROLINA EDUC T V COMM V F.C.C (D.C. CIR 73-1679, 39FCC2D1180

VIOLATIONS FCC RULES AND REGULATIONS

RENEWAL OF LICENSES GRANTED FOR 1 YEAR PERIOD ONLY TO ALLOW FOR EARLIER REVIEW OF OPERATIONS SINCE LICENSEE HAS IN THE PAST BEEN CITED FOR NUMEROUS VIOLATIONS ***PACIFIC B/CING CORP.*** 39FCC2D1055

DIGEST BY STATUTORY AND RULE PROVISIONS

Section	United States Code	
COMMUNICATIONS ACT OF 1934, AS AMENDED		
201(B)	47USC 201(B)	PROPOSED REVISIONS OF TARIFF, DEALING WITH UNMIXED PRIVATE LINE SERVICE, SUSPENDED DUE TO QUESTIONABLE LAWFULNESS OF THE REVISIONS, AND INVESTIGATION ORDERED TO DETERMINE WHETHER LAWFUL AND WHAT CORRECTIVE MEASURES SHOULD BE TAKEN. (SECS. 201(B) AND 202(A)). ***AMER. TEL. & TEL. CO.*** 39FCC2D0631
202(A)	47USC 202(A)	PROPOSED REVISIONS OF TARIFF, DEALING WITH UNMIXED PRIVATE LINE SERVICE, SUSPENDED DUE TO QUESTIONABLE LAWFULNESS OF THE REVISIONS, AND INVESTIGATION ORDERED TO DETERMINE WHETHER LAWFUL AND WHAT CORRECTIVE MEASURES SHOULD BE TAKEN. (SECS. 201(B) AND 202(A)). ***AMER. TEL. & TEL. CO.*** 39FCC2D0631
203(C)	47USC 203(C)	PETITION FOR PARTIAL RECONSIDERATION OF ORDER FOR FORFEITUREFOR VIOLATION OF SECTION 203(C) (35 FCC 2D 707) DENIED, SINCE A CARRIER MAY NOT COLLECT ANY PAYMENT THAT IS NOT SPECIFIED IN THE TARIFF SCHEDULE THEN IN EFFECT. ***CRUCES CABLE CO., INC.*** 39FCC2D0552
301	47USC 301	REQUEST FOR REDUCTION OF FORFEITURE AMOUNT IMPOSED FOR VIOLATION OF PROVISIONS OF STATION AUTHORIZATION, SECTIONS 73.67(A)(6), 73.93(E), 73.111(A) AND 301 DENIED SINCE THE FORFEITURE PROVISIONS ARE PUNITIVE NOT EDUCATIONAL AS PROPOSED, AND A LICENSEE IS RESPONSIBLE FOR ITS EMPLOYEES ACTION. ***WEST JERSEY B/CING CO.*** 39FCC2D0540
307(B)	47USC 307(B)	APPLICATION FOR AN INCREASE IN DAYTIME POWER DENIED SINCE THE SUBURBAN COMMUNITY 307(B) PRESUMPTION OF SERVICE HAS NOT BEEN SATISFACTORILY REBUTTED. ***WHJB, INC.*** 39FCC2D0296
		APPLICATION FOR REVIEW OF A REVIEW BOARD DECISION, 29 FCC 2D 533 , GRANTING APPLICATION FOR VACATED FREQUENCY, GRANTED DUE TO SERIOUS PUBLIC INTEREST QUESTIONS RAISED CONCERNING CHARACTER QUALIFICATIONS OF SUCCESSFUL APPLICANT, AND ORAL ARGUMENT ORDERED WITH ALL APPLICANTS PARTICIPATING. ***JOBBINS, CHARLES W.*** 39FCC2D0597
		APPLICATION TO CHANGE LOCATION AND CLASS OF STATION FROM CLASS II TO CLASS III DENIED SINCE THE PROPOSED OPERATION WOULD LOSE A PORTION OF ITS BROADCAST DAY BY DISCONTINUANCE OF PRE-SUNRISE OPERATION, AND THE 307(B) ISSUE (EQUITABLE DISTRIBUTION OF BROADCAST FACILITIES) IS CONTROLLING. COMPETING APPLICATION GRANTED. ***SADOW, JAY*** 39FCC2D0808
		APPLICATION PREVIOUSLY DISMISSED (27FCC2D66) ON DUOPOLY RULE(SEC. 73.35) REINSTATED AND

Section	United States Code	
		DESIGNATED FOR HEARING ON ISSUES AS TO FINANCIAL, AREAS AND POPULATIONS, 307(B), OVERLAP, AND COMMUNITY NEEDS. REQUESTS FOR WAIVER OF SECS. 1.580(B), 1.580(B), 1.569(B)(2)(I) (TRANSMITTER SITE LOCATION) AND SECS. 1.571(C) AND 1.227(B)(1) ARE GRANTED. ***QUINNIPIAC VALLEY SERVICE, INC.*** 39FCC2D0948
		MOTION TO ENLARGE ISSUES TO INCLUDE SUBURBAN AND CROSS OWNERSHIP ISSUES DENIED FOR INSUFFICIENCY OF ALLEGATIONS. EXISTING SUBURBAN COMMUNITY 307(B) ISSUE IS BROADENED TO INCLUDE DETERMINATION WITH RESPECT TO SANTA CLARA, CALIF. ***ST. CROSS B/CING, INC.*** 39FCC2D0970
309	47USC 309	APPLICATION FOR LICENSE RENEWAL IS DESIGNATED FOR HEARING SINCE SUBSTANTIAL AND MATERIAL QUESTIONS OF FACT CONCERNING ASCERTAINMENT OF COMMUNITY NEEDS AND MISCONDUCT AT A STATION HAVE BEEN RAISED PURSUANT TO 309(D) AND (E). ***WOIC, INC.*** 39FCC2D0355
309(B)	47USC 309(B)	PETITION FOR RECONSIDERATION OF ORDER INVOLVING PROCESSING AND PUBLIC NOTICE PRECEDURES FOR AVIATION SERVICE APPLICATIONS GRANTED AND AMENDMENT OF SEC. 1.962(E), CONCERNING NOTICE WHERE APPLICATION IS RETURNED FOR CORRECTION, ADOPTED. ***APPLICATIONS - SAFETY AND SPECIAL*** 39FCC2D0124
309(D)	47USC 309(D)	APPLICATION FOR RENEWAL OF LICENSE GRANTED SINCE PETITION TODENY FAILED TO MEET 390(D) REQUIREMENTS OF ALLEGING SPECIFIC ACTS TO ESTABLISH A PRIMA FACIE CASE FOR DENIAL AS TO EQUAL EMPLOYMENT OPPORTUNITIES, COMMUNITY NEEDS AND ACCESS TO PUBLIC FILES (SEC. 1.539). ***AVCO BROADCASTING CORP.*** 39FCC2D0004
		AVCO B/CING CORP. DECISION GRANTING RENEWAL OF TV B/C LICENSE AFFIRMED W/O OPINION THE BILINGUAL CULTURAL COALITION ON MASS MEDIA V. FCC (D.C. CIR. 72-2205). ***AVCO BROADCASTING CORP.*** 39FCC2D0004
		APPLICATION FOR LICENSE RENEWAL (SEC. 309(D)) GRANTED, SINCETHE PETITION TO DENY FAILED TO ESTABLISH ANY SUBSTANTIAL AND MATERIAL QUESTIONS OF FACT CONCERNING ALLEGED DISCRIMINATORY EMPLOYMENT PRACTICES AND INADEQUATE COMMUNITY SURVEY. ***GREAT TRAILS B/CING CORP.*** 39FCC2D0039
		APPLICATION FOR LICENSE RENEWAL GRANTED SINCE THE PETITION TO DENY FAILED TO ESTABLISH MATERIAL QUESTION FACT (SEC. 309 (D)). CONCERNING EMPLOYMENT PRACTICES, PROGRAMMING AVAILABILITY OF PUBLIC FILE AND ASCERTAINMENT OF COMMUNITY PROBLEMS. ***MAHONING VALLEY B/CING CORP.*** 39FCC2D0052
		PETITION FOR RECONSIDERATION GRANT OF A LICENSE RENEWAL APPLICATION (30FCCID958) IS DENIED SINCE PETITIONERS ALLEGATIONS CONCERNING COMMUNITY SURVEY, PROGRAMMING AND EMPLOYMENT AND COMMERCIAL PRACTICES WERE NOT SPECIFIC (SEC. 309(D)). ***WKBN BROADCASTING CORP.*** 39FCC2D0116

Section	United States Code	
309(D)(2)	47USC 309(D)(2)	APPLICATION FOR ASSIGNMENT OF LICENSE IN THE DOMESTIC LAND MOBILE RADIO SERVICE GRANTED SINCE NO FACTUAL CONTENTIONS TO BASE A CLAIM OF DISCRIMINATORY RATES OR PUBLIC INCONVENIENCE HAVE BEEN MADE TO WARRANT A HEARING UNDER 309 (D)(2). ***NORTHERN MOBILE TELEPHONE CO.*** 39FCC2D0608
309(F)	47USC 309(F)	APPLICATION FOR WAIVERS, FOR ACCEPTANCE, AND FOR SPECIAL TEMPORARY AUTHORITY TO OPERATE SILENT AM AND FM STATIONS GRANTED AND SECS. 1.516(C), 1.517(C) ARE WAIVED TO ALLOW EARLY CONSIDERATION OF PERMANENT AUTHORIZATION PURSUANT TO SEC. 309(F) SINCE EXTRAORDINARY CIRCUMSTANCES EXIST TO RESTORE THE ONLY LOCAL BROADCAST SERVICES AVAILABLE. ***MID-MICHIGAN B/CING CORP.*** 39FCC2D0173
		PETITION FOR RECONSIDERATION OF DECISION GRANTING EMERGENCY SPECIAL TEMPORARY AUTHORITY PURSUANT TO 309(F) TO CONSTRUCT AND OPERATE A UHF TRANSLATOR STATION, PENDING ACTION ON APPLICATION FOR REGULAR AUTHORITY, DENIED AND EMERGENCY AUTHORITY REAFFIRMED, SINCE NO SHOWING OF PUBLIC DETRIMENT, PRIVATE OR ECONOMIC INJURY, HAS BEEN MADE. ***TELEMUNDO, INC.*** 39FCC2D0522
310(B)	47USC 310(B)	PETITION TO DENY ASSIGNMENT OF LICENSE BY RECEIVER DENIED SINCE THE COURT WHICH HAS JURISDICTION OF THE RECEIVER HAS APPROVED THE ASSIGNMENT SUBJECT TO COMMISSION APPROVAL, AND PETITIONER, AN UNSUCCESSFUL PROSPECTIVE ASSIGNEE, HAS NO STANDING BEFORE THE COMMISSION. (SEC. 310(B)). ***GORMAN, LEON P., JR. RECEIVER*** 39FCC2D0037
312(A)	47USC 312(A)	COMPLAINT AGAINST LICENSEE ALLEGING DENIAL OF REASONABLE ACCESS (SEC. 312(A)) FOR AIRING OF POLITICAL CANDIDATES VIEWS FOUND NOT TO WARRANT FURTHER ACTION, SINCE THERE WAS NO COMPLAINT FROM THE CANDIDATE HIMSELF. ***REASONABLE ACCESS*** 39FCC2D1064
312(A)(7)	47USC 312(A)(7)	COMPLAINTS ALLEGING FAILURE TO PRESENT VIEWS CONTRARY TO ANTI-MINING AND BOMBING NORTH VIETNAM PROGRAM DENIED SINCE OPPOSING VIEWS HAD BEEN BROADCAST. COMPLAINT REGARDING FAILURE TO PROVIDE EQUAL TIME UNDER SECS. 315, 312(A)(7), AND ENDORSEMENT OF CANDIDATE UNDER SEC. 399, DISMISSED SINCE UNSUPPORTED. ***ROWLEY, HORACE P.*** 39FCC2D0437
315	47USC 315	COMPLAINT CONCERNING EQUAL TIME PROVISIONS OF SECTION 315 DENIED SINCE NON OF THE APPLICANTS WERE LEGALLY QUALIFIED CANDIDATES UNDER STATE OR NATIONAL REQUIREMENTS, OR UNDER SECTION 73.657(A), AND SINCE NEITHER HAD ARRIVED AT THE PRESCRIBED AGE FOR CANDIDATES FOR PRESIDENT AND VICE PRESIDENT. ***SOCIALIST WORKER PARTY 1972*** 39FCC2D0089
		COMPLAINTS ALLEGING FAILURE TO PRESENT VIEWS CONTRARY TO ANTI-MINING AND BOMBING NORTH VIETNAM PROGRAM DENIED SINCE OPPOSING VIEWS HAD BEEN BROADCAST. COMPLAINT REGARDING FAILURE TO PROVIDE EQUAL TIME UNDER SECS. 315, 312(A)(7), AND ENDORSEMENT OF CAN-

Section	United States Code	
		DIDATE UNDER SEC. 399. DISMISSED SINCE UNSUPPORTED. ***ROWLEY, HORACE P.*** 39FCC2D0437
		COMPLAINT CONCERNING SECTION 315 EQUAL OPPORTUNITY RULING DISMISSED SINCE LICENSEE DID NOT INTENTIONALLY DISCRIMINATE BY FIRST ADVISING COMPLAINANT THAT NO SPOT ANNOUNCEMENTS WOULD BE AVAILABLE FOR HIS PRIMARY RACE. WHICH ADVICE WAS IN ERROR. AND ALLOWING HIS OPPONENT TIME. LICENSEE FOUND TO BE IN VIOLATION OF SEC. 73.657(A)(2). ***HARRISON, JAMES L.*** 39FCC2D0504
		COMPLAINT CONCERNING FAILURE OF BROADCAST MEDIA TO GIVE EQUAL NEWS COVERAGE TO COMPLAINANT AS A CANDIDATE. DISMISSED SINCE THE COMMISSION WILL NOT SUBSTITUTE ITS NEWS JUDGMENT FOR THAT OF A BROADCASTER IN THE ABSENCE IF DELIBERATE DISTORTION. ***ODONNELL, ROBERT E.*** 39FCC2D0508
		COMPLIANCE CONCERNING 315 POLITICAL BROADCASTS DISMISSED SINCE EQUAL TIME IS NOT REQUIRED TO A BONA FIDE NEWSCAST OF A CANDIDATE. AND NO EVIDENCE REGARDING A PERSONAL ATTACK ON HONESTY. CHARACTER OR INTEGRITY HAS BEEN PROVIDED. AND 73.123(C) ONLY REQUIRES AN OPPORTUNITY TO RESPOND TO AN AUTHORIZED EDITORIAL OF ENDORSEMENT. ***RIHERD, MRS. CARMEN C.*** 39FCC2D0617
		APPLICATION FOR REVIEW OF DECISION. RULING FAIRNESS DOCTRINEINAPPLICABLE TO MOUNTAIN SPORTS NETOWRK. DENIED SINCE THE NETOWRK PROGRAMMING IS SPECIALIZED AND SEASONAL WITH NO REGULAR NEWS OR COMMENTARY PROGRAMS AND SEC. 315 OBLIGATIONS APPLY ONLY TO INDIVIDUAL STATION LICENSEES. NOT NETWORKS. ***APPALACHIAN RESEARCH & DEFENSE FUND*** 39FCC2D0708
317	47USC 317	APPLICATION FOR MITIGATION OF FORFEITURE 37FCC2D518 FOR VIOLATION OF SECS. 317 AND 73.645 INVOLVING SPONSOR IDENTIFICATION AND SEC. 73.1205 FOR CLIPPING CRAWLS CLASSIFIED AS ADVERTISING. DENIED SINCE THE ACTS WERE REPEATED FREQUENTLY. ***CHANNEL 13 OF LAS VEGAS, INC.*** 39FCC2D0128
		FORFEITURE OF 3,000 ORDERED FOR REPEATED VIOLATIONS OF SEC 317 AND SEC. 73 119 SPONSORSHIP IDENTIFICATION OF COMMERCIAL ANNOUNCEMENTS . ***METRO COMMUNICATIONS, INC.*** 39FCC2D1053
317	47USC 317(C)	FORFEITURE FOR VIOLATING OF SEC. 73.112(A)(2)(II). (LOGGING THE DURATION OF COMMERCIALS). AND SECS. 73.119 AND 317 FOR FAILURE TO GIVE THE REQUIRED SPONSOR IDENTIFICATION SINCE THE VIOLATIONS ARE REPORTED. ***GROSSCO, INC.*** 39FCC2D0589
326	47USC 326	COMPLAINT CONCERNING THE FAIRNESS DOCTRINE FOR PERSONAL ATTACK DISMISSED SINCE THE STATEMENTS DID NOT ATTACK OR OTHERWISE IMPUGN ONES HONESTY. CHARACTER OR INTEGRITY AND TIME WAS OFFERED AND GRANTED TO PRESENT CONTRASTING VIEWS. SEC. 326 . ***KASKASKIA JUNIOR COLLEGE*** 39FCC2D0566

Section	United States Code	
396(G)(1)	47USC 396(G)(1)	COMPLAINT UNDER SEC. 396(G)(1)(A). REQUESTING THE PRESENTATION OF OPPOSING VIEWPOINTS TO BLANCE THE STATIONS PRESENTATIONS. DISMISSED SINCE THE FAIRNESS DOCTRINE DOES NOT REQUIRE A RESPONSE TO AN INDIVIDUAL SPEECH OR PRESENTATION. BUT ONLY A REASONABLE OPPORTUNITY OVER A REASONABLE PERIOD OF TIME. ***ACCURACY IN MEDIA, INC.*** 39FCC2D0416
		COMPLIANT ALLEGING FAILURE TO PRESENT OPPOSING VIEWS TO CRITICS OF THE PRESIDENTS POLICY IN VIETNAM, IN VIOLATION OF 396 (G)(1)(A). DISMISSED SINCE COMPLAINT FAILS TO DISCLOSE GROUNDS FOR CONCLUDING THAT REASONABLE OPPORTUNITY HAS NOT BEEN AFFORDED IN OVERALL PROGRAMMING. ***ACCURACY IN MEDIA, INC.*** 39FCC2D0558
399	47USC 399	COMPLAINTS ALLEGING FAILURE TO PRESENT VIEWS CONTRARY TO ANTI-MINING AND BOMBING NORTH VIETNAM PROGRAM DENIED SINCE OPPOSING VIEWS HAD BEEN BROADCAST. COMPLAINT REGARDING FAILURE TO PROVIDE EQUAL TIME UNDER SECS. 315, 312(A)(7). AND ENDORSEMENT OF CANDIDATE UNDER SEC. 399. DISMISSED SINCE UNSUPPORTED. ***ROWLEY, HORACE P.*** 39FCC2D0437

RULES AND REGULATIONS

Section

FEDERAL COMMUNICATIONS COMMISSION

0.311 SEC. 0.311 AMENDED TO EXPAND AUTHORITY DELEGATED TO CHIEF FIELD ENGINEERING BUREAU. ***COMMERCIAL OPERATOR PERMITS*** 39FCC2D0998

0.461(D)(2) REQUEST FOR THE INSPECTION OF SUMMARY RECORD OF THE 62ND MEETING OF ICS, CONCERNING THE INTELSAT IV SATELLITE SERIES, GRANTED IN PART PURSUANT TO THE REVIEW REQUIREMENTS OF 0.461 (D)(2), BUT REQUEST FOR DELAY OF FURTHER COMMISSION ACTION ON THE SERIES DENIED DUE TO THE IMMEDIATE NEED FOR ACTION AND TIMING OF THE REQUEST. ***ITT WORLD COMM., INC.*** 39FCC2D0593

0.485 SECTION 0.485 AND APPENDIX 1 PART 97 OF THE COMMISSIONS RULES REGARDING RADIO OPERATOR EXAMINATION POINTS, AMENDED. ***RADIO OPERATOR EXAMINATION POINTS*** 39FCC2D0493

1. PARTS 1, 2 AND 87 OF THE RULES AMENDED TO PROVIDE FOR LICENSING, TESTING AND OPERATION OF AN EMERGENCY LOCATOR TRANSMITTER AND TO SPECIFY FREQUENCIES AVAILABLE FOR ITS USE. ***EMERGENCY LOCATOR TRANSMITTERS*** 39FCC2D1004

1.53(B) MOTION TO ENLARGE ISSUES IN PROCEEDING INVOLVING RENEWAL ANDNEW APPLICANTS GRANTED AS TO REQUESTED NETWORK AFFILIATION AND FINANCIAL QUALIFICATIONS ISSUES AND DENIED AS TO REPORTING CRIMINAL VIOLATIONS, TRANSMITTER SUITABILITY, EQUAL EMPLOYMENT, PUBLIC INSPECTION, INEPTNESS, SEC. 1.514, AND 1.53(B) ISSUES. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1077

1.65 A REIMBURSEMENT AGREEMENT DEPENDENT UPON A FAVORABLE RULING ON SECS. 1.514(A) AND 1.65 ISSUES (FAILURE TO REPORT CHANGES) GRANTED, SINCE THE FAILURE TO REPORT WAS DUE TO A MISUNDERSTANDING OF THE APPLICATION DIRECTIONS. ***SANDHILL COMMUNITY B/CERS, INC.*** 39FCC2D0086

PETITION FOR LEAVE TO AMEND TO UPDATE APPLICATION PURSUANT TO SEC. 1.65 GRANTED SINCE NO OBJECTIONS HAVE BEEN TIMELY RAISED. ***TRI COUNTY B/CING CO.*** 39FCC2D0112

PETITION TO ENLARGE ISSUES GRANTED IN PART TO INCLUDE AN ISSUE AS TO FAILURE TO REPORT REQUISITE INFORMATION (SEC. 1.514(A)), AND THE EFFECT IF ANY ON THE APPLICATION SINCE THERE APPEARS TO BE A FAILURE TO LIST ALL LIABILITIES. REQUEST FOR STAFFING AND ANTENNA SITE ISSUES, DENIED. ***COLORADO WEST B/CING INC.*** 39FCC2D0407

PETITION FOR LEAVE TO AMEND TO UPDATE APPLICATION GRANTED PURSUANT TO SEC. 1.65 SINCE NO

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	TIMELY OBJECTIONS WERE FILED. ***JEFFERSON PILOT B/CING CO.*** 39FCC2D0469
	PETITION TO ENLARGE ISSUES TO INCLUDE A SEC. 1.65 ISSUE DENIED SINCE THE MATTER ALLEGED TO HAVE BEEN UNREPORTED WAS FULLY REPORTED IN OTHER COMMISSION DECISIONS AND OPINIONS. ***SALEM BROADCASTING CO., INC.*** 39FCC2D0500
	PETITION TO ENLARGE ISSUES TO INCLUDE A SEC. 1.65 ISSUE DENIED SINCE THE ALLEGATIONS REGARDING FAILURES TO REPORT WERE EITHER INACCURATE OR INSIGINIFICANT. ***SALEM BROADCASTING CO, INC.*** 39FCC2D0501
	MOTION TO ENLARGE ISSUES GRANTED TO ADD ISSUES AS TO MISREPRESENTATION AND COMPLIANCE WITH SECTION 1.65 PROVISIONS SINCE APPARENT MISSTATEMENTS HAVE RAISED A SUFFICIENT QUESTION OF APPLICANTS QUALIFICATIONS. ***ST. CROSS B/CING, INC.*** 39FCC2D0514
	PETITION FOR RECONSIDERATION OF REVIEW BOARD DECISION (37 FCC2D686) DENYING APPLICATION TO OPERATE FORMER FACILITIES OF KICM ON BASIS OF UNAUTHORIZED TRANSFER OF CONTROL. INTRODUCTION OF EVIDENCE, FIANACIAL, MISREPRESENTATION, SEC. 1.65 AND EX PARTE ISSUES, DENIED SINCE SAME ADVERSE DETERMINATION ON THE ISSUES EXISTS. ***VOICE OF REASON, INC.*** 39FCC2D0847
	MOTION TO ENLARGE ISSUES TO INCLUDE SEC. 1.65 ISSUE DENIED SINCE FAILURE TO AMEND IS NOT OF SUFFICIENT SIGNIFICANCE TO WARRANT FURTHER COMPLICATING THE PROCEEDING. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1098
1.106(A)	REQUESTED WAIVER OF SEC. 1.106(A), DISALLOWING RECONSIDERATION OF INTERLOCULATORY RULINGS BY THE REVIEW BOARD, DENIED SINCE NO JUSTIFICATION FOR THE WAIVER HAS BEEN PRESENTED. ***SALEM B/CING CO., INC.*** 39FCC2D0178
1.227(B)(1)	APPLICATION PREVIOUSLY DISMISSED (27FCC2D66) ON DUOPOLY RULE(SEC. 73.35) REINSTATED AND DESIGNATED FOR HEARING ON ISSUES AS TO FINANCIAL, AREAS AND POPULATIONS, 307(B), OVERLAP, AND COMMUNITY NEEDS. REQUESTS FOR WAIVER OF SECS. 1.580(B), 1.580(B), 1.569(B)(2)(I) (TRANSMITTER SITE LOCATION) AND SECS. 1.571(C) AND 1.227(B)(1) ARE GRANTED. ***QUINNIPIAC VALLEY SERVICE, INC.*** 39FCC2D0948
1.229(C)	JOINT PETITION FOR ENLARGEMENT OF ISSUES TO INCLUDE AN ISSUEOF WHETHER PROPOSEF TARIFF RATE CHANGES ARE CONSISTENT WITH PRICE COMMISSION GUIDELINES DENIED, SINCE THE ISSUES AS ORIGINALLY STARTED WILL COVER THIS AND THE MOTION WAS PRECEDURALLY DEFICIENT, LACKING AFFIDAVIT (SEC. 1.229(C)). ***AMERICAN TELEVISION RELAY, INC.*** 39FCC2D0545
1.301(A)(4)	APPEAL FROM ADMINISTRATIVE JUDGES ORDER GRANTING APPLICATIONFOR REIMBURSEMENT, GRANTED AND ORDER FCC 72M-1595 IS SET ASIDE PENDING RESOLUTION OF OUTSTANDING CHARACTER ISSUE AGAINST APPLICANT. ***ST. CROSS B/CING, INC.*** 39FCC2D0512

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1.301(B)	APPLICATION FOR REVIEW OF ORDER DISMISSED WITHOUT PREJUDICE SINCE SEC. 1.301(B) PRECLUDES REVIEW ABSENT A WAIVER WHICH HAS NOT BEEN OBTAINED. ***ALABAMA EDUC. TV COMM.*** 39FCC2D0123
1.514	APPLICATION FOR AM STATION GRANTED SINCE FAILURE TO PUBLISH LOCAL NOTICE AT REQUIRED TIME (SEC. 1.580(C)), FAILURE TO HAVE COPY FOR PUBLIC INSPECTION, AND FAILURE TO REPORT A POWER INCREASE APPLICATION (SEC. 1.514) ARE NOT SUFFICIENTLY SERIOUS TO DISQUALIFY THE APPLICANT. ***FRANKLIN BROADCASTING CO.*** 39FCC2D0032
	MOTION TO ENLARGE ISSUES IN PROCEEDING INVOLVING RENEWAL ANDNEW APPLICANTS GRANTED AS TO REQUESTED NETWORK AFFILIATION AND FINANCIAL QUALIFICATIONS ISSUES AND DENIED AS TO REPORTING CRIMINAL VIOLATIONS, TRANSMITTER SUITABILITY, EQUAL EMPLOYMENT, PUBLIC INSPECTION, INEPTNESS, SEC. 1.514, AND 1.53(B) ISSUES. ***WESTERN COMMUNICATIONS, INC.*** 39FCC2D1077
1.514(A)	A REIMBURSEMENT AGREEMENT DEPENDENT UPON A FAVORABLE RULING ON SECS. 1.514(A) AND 1.65 ISSUES (FAILURE TO REPORT CHANGES) GRANTED. SINCE THE FAILURE TO REPORT WAS DUE TO A MISUNDERSTANDING OF THE APPLICATION DIRECTIONS. ***SANDHILL COMMUNITY B/CERS, INC.*** 39FCC2D0086
	PETITION TO ENLARGE ISSUES GRANTED IN PART TO INCLUDE AN ISSUE AS TO FAILURE TO REPORT REQUISITE INFORMATION (SEC. 1.514(A)), AND THE EFFECT IF ANY ON THE APPLICATION SINCE THERE APPEARS TO BE A FAILURE TO LIST ALL LIABILITIES. REQUEST FOR STAFFING AND ANTENNA SITE ISSUES, DENIED. ***COLORADO WEST B/CING INC.*** 39FCC2D0407
1.516(C)	APPLICATION FOR WAIVERS, FOR ACCEPTANCE, AND FOR SPECIAL TEMPORARY AUTHORITY TO OPERATE SILENT AM AND FM STATIONS GRANTED AND SECS. 1.516(C), 1.517(C) ARE WAIVED TO ALLOW EARLY CONSIDERATION OF PERMANENT AUTHORIZATION PURSUANT TO SEC. 309(F) SINCE EXTRAORDINARY CIRCUMSTANCES EXIST TO RESTORE THE ONLY LOCAL BROADCAST SERVICES AVAILABLE. ***MID-MICHIGAN B/CING CORP.*** 39FCC2D0173
1.517(C)	APPLICATION FOR WAIVERS, FOR ACCEPTANCE, AND FOR SPECIAL TEMPORARY AUTHORITY TO OPERATE SILENT AM AND FM STATIONS GRANTED AND SECS. 1.516(C), 1.517(C) ARE WAIVED TO ALLOW EARLY CONSIDERATION OF PERMANENT AUTHORIZATION PURSUANT TO SEC. 309(F) SINCE EXTRAORDINARY CIRCUMSTANCES EXIST TO RESTORE THE ONLY LOCAL BROADCAST SERVICES AVAILABLE. ***MID-MICHIGAN B/CING CORP.*** 39FCC2D0173
1.525	APPLICATION FOR NEW FM BROADCAST STATION GRANTED AND AGREEMENT FOR PARTIAL REIMBURSEMENT APPROVED PURSUANT TO 1.525(A) SINCE THE AGREEMENT WOULD NOT UNDULY IMPEDE FAIR DISTRIBUTION OF RADIO SERVICE. ***LANKFORD B/CING CO.*** 39FCC2D0163

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1.539	APPLICATION FOR RENEWAL OF LICENSE GRANTED SINCE PETITION TODENY FAILED TO MEET 390(D) REQUIREMENTS OF ALLEGING SPECIFIC ACTS TO ESTABLISH A PRIMA FACIE CASE FOR DENIAL AS TO EQUAL EMPLOYMENT OPPORTUNITIES, COMMUNITY NEEDS AND ACCESS TO PUBLIC FILES (SEC. 1.539). ***AVCO BROADCASTING CORP.*** 39FCC2D0004
	AVCO B/CING CORP. DECISION GRANTING RENEWAL OF TV B/C LICENSE AFFIRMED W/O OPINION THE BILINGUAL CULTURAL COALITION ON MASS MEDIA V. FCC (D.C. CIR. 72-2205). ***AVCO BROADCASTING CORP.*** 39FCC2D0004
1.569(B)(2)(I)	APPLICATION PREVIOUSLY DISMISSED (27FCC2D66) ON DUOPOLY RULE(SEC. 73.35) REINSTATED AND DESIGNATED FOR HEARING ON ISSUES AS TO FINANCIAL, AREAS AND POPULATIONS, 307(B), OVERLAP, AND COMMUNITY NEEDS. REQUESTS FOR WAIVER OF SECS. 1.580(B), 1.580(B), 1.569(B)(2)(I) (TRANSMITTER SITE LOCATION) AND SECS. 1.571(C) AND 1.227(B)(1) ARE GRANTED. ***QUINNIPIAC VALLEY SERVICE, INC.*** 39FCC2D0948
1.571	PART 73 OF THE RULES AMENDED REGARDING AM STATION ASSIGNMENTSTANDARDS AND THE RELATIONSHIP BETWEEN THE AM AND FM BROADCAST SERVICES. ***B/CST STATION ASSIGNMENT STANDARDS*** 39FCC2D0645
1.571(C)	APPLICATION PREVIOUSLY DISMISSED (27FCC2D66) ON DUOPOLY RULE(SEC. 73.35) REINSTATED AND DESIGNATED FOR HEARING ON ISSUES AS TO FINANCIAL, AREAS AND POPULATIONS, 307(B), OVERLAP, AND COMMUNITY NEEDS. REQUESTS FOR WAIVER OF SECS. 1.580(B), 1.580(B), 1.569(B)(2)(I) (TRANSMITTER SITE LOCATION) AND SECS. 1.571(C) AND 1.227(B)(1) ARE GRANTED. ***QUINNIPIAC VALLEY SERVICE, INC.*** 39FCC2D0948
1.580	APPLICATION FOR AM STATION GRANTED SINCE FAILURE TO PUBLISH LOCAL NOTICE AT REQUIRED TIME (SEC. 1.580(C)), FAILURE TO HAVE COPY FOR PUBLIC INSPECTION, AND FAILURE TO REPORT A POWER INCREASE APPLICATION (SEC. 1.514) ARE NOT SUFFICIENTLY SERIOUS TO DISQUALIFY THE APPLICANT. ***FRANKLIN BROADCASTING CO.*** 39FCC2D0032
1.580(B)	APPLICATION PREVIOUSLY DISMISSED (27FCC2D66) ON DUOPOLY RULE(SEC. 73.35) REINSTATED AND DESIGNATED FOR HEARING ON ISSUES AS TO FINANCIAL, AREAS AND POPULATIONS, 307(B), OVERLAP, AND COMMUNITY NEEDS. REQUESTS FOR WAIVER OF SECS. 1.580(B), 1.580(B), 1.569(B)(2)(I) (TRANSMITTER SITE LOCATION) AND SECS. 1.571(C) AND 1.227(B)(1) ARE GRANTED. ***QUINNIPIAC VALLEY SERVICE, INC.*** 39FCC2D0948
1.580(C)	PETITION TO ENLARGE ISSUES TO INCLUDE FAILURE TO PUBLISH NOTICE IN A DAILY PAPER OF GENERAL CIRCULATION, SEC. 580 C , DENIED SINCE THE SUPREME COURT OF IOWA HAS RULED THAT THE PAPER INVOLVED WAS OF GENERAL CIRCULATION. ***BREECE, JOHN L.*** 39FCC2D0376
1.580(I)	REQUEST FOR EXTENSION OF TIME IN WHICH TO FILE A PETITION TODENY RENEWAL OF LICENSE

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	GRANTED, AND SEC. 1.580(I) WAIVED. ***CITIZENS COMMUNICATIONS CENTER*** 39FCC2D0993
1.962(B)	PETITION FOR RECONSIDERATION OF ORDER INVOLVING PROCESSING AND PUBLIC NOTICE PRECEDURES FOR AVIATION SERVICE APPLICATIONS GRANTED AND AMENDMENT OF SEC. 1.962(E), CONCERNING NOTICE WHERE APPLICATION IS RETURNED FOR CORRECTION, ADOPTED. ***APPLICATIONS - SAFETY AND SPECIAL*** 39FCC2D0124
1.1102	CERTIFICATION FOR A LAND MOBILE COMMUNICATIONS RECEIVER IS RESCINDED IN ACCORDANCE WITH 1.1120 AND 1.1102 FOR FAILURE TO PAY GRANT FEE IN DESIGNATED TIME. ***SONA LABS, INC.*** 39FCC2D0511
	PART 1 AMENDED TO PROVIDE FOR PREPAYMENT OF COMBINED FILING AND GRANT FEE WITH AN APPLICATION FOR CERTIFICATION OR TYPE ACCEPTANCE. ***SCHEDULE OF FEES*** 39FCC2D0956
1.1103	PART 1 AMENDED TO PROVIDE FOR PREPAYMENT OF COMBINED FILING AND GRANT FEE WITH AN APPLICATION FOR CERTIFICATION OR TYPE ACCEPTANCE. ***SCHEDULE OF FEES*** 39FCC2D0956
1.1113	PETITION FOR COMMISSION DETERMINATION THAT NO FILING OR GRANT FEE BE APPLICABLE TO THE LAUNCH OF INTELSAT IV F-3 SATELLITE BECAUSE THE GRANT OF CONSTRUCTION AUTHORITY WAS MADE PRIOR TO THE ADOPTION OF THE FEE SCHEDULE DENIED SINCE THE FEE ATTACHES WHEN LAUNCHED AND OPERATIONAL SEC. 1.1113 DISCUSSED. ***COMMUNICATIONS SATELLITE CORP.*** 39FCC2D0549
1.1120	CERTIFICATION FOR A LAND MOBILE COMMUNICATIONS RECEIVER IS RESCINDED IN ACCORDANCE WITH 1.1120 AND 1.1102 FOR FAILURE TO PAY GRANT FEE IN DESIGNATED TIME. ***SONA LABS, INC.*** 39FCC2D0511
	PART 1 AMENDED TO PROVIDE FOR PREPAYMENT OF COMBINED FILING AND GRANT FEE WITH AN APPLICATION FOR CERTIFICATION OR TYPE ACCEPTANCE. ***SCHEDULE OF FEES*** 39FCC2D0956
2.	PART 2 TABLE OF FREQUENCY ALLOCATIONS AMENDED TO CONFORM TO A PRACTICABLE EXTENT TO THE GENEVA RADIO REGULATIONS, AS REVISED BY THE SPACE WARC. ***SPACE WARC, AMEND. OF PART 2*** 39FCC2D0959
	PARTS 1, 2 AND 87 OF THE RULES AMENDED TO PROVIDE FOR LICENSING, TESTING AND OPERATION OF AN EMERGENCY LOCATOR TRANSMITTER AND TO SPECIFY FREQUENCIES AVAILABLE FOR ITS USE. ***EMERGENCY LOCATOR TRANSMITTERS*** 39FCC2D1004
2.805	PETITION FOR RECONSIDERATION REQUESTING EXTENSION OF WAIVERSOF SECS. 2.805 AND 15.7 PERMITTING MARKETING OF CLASS I TV DEVICES AND SEC. 15.407 REQUIRING SAID DEVICES TO BE EQUIPPED WITH A RECEIVER TRANSFER SWITCH HAVING A 60 DB ISOLATION, GRANTED SINCE TIMETABLES PRESENTED INDICATE UNDUE HARDSHIP WOULD RESULT TO MANUFACTURERS WITHOUT EXTENSION OF WAIVERS. ***CLASS I TV DEVICE*** 39FCC2D0689

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13.70	SEC. 13.70 AMENDED TO INCLUDE PROHIBITION OF ALTERATION OR DUPLICATION OF A COMMERCIAL RADIO OPERATORS LICENSE AS WELL AS THE OBTAINING OF SAME BY FRAUDULENT MEANS. ***COMMERCIAL RADIO OPERATORS*** 39FCC2D0695
15.7	PETITION FOR RECONSIDERATION REQUESTING EXTENSION OF WAIVERSOF SECS. 2.805 AND 15.7 PERMITTING MARKETING OF CLASS I TV DEVICES AND SEC. 15.407 REQUIRING SAID DEVICES TO BE EQUIPPED WITH A RECEIVER TRANSFER SWITCH HAVING A 60 DB ISOLATION. GRANTED SINCE TIMETABLES PRESENTED INDICATE UNDUE HARDSHIP WOULD RESULT TO MANUFACTURERS WITHOUT EXTENSION OF WAIVERS. ***CLASS I TV DEVICE*** 39FCC2D0689
15.68	REQUEST FOR WAIVER OF THE COMPARABLE TUNING RULES (SEC. 15.68) GRANTED SINCE PETITIONER IS A SMALL FIRM AND HAS MADE GOOD FAITH EFFORTS TO COMPLY. ***ANDREA RADIO CORP.*** 39FCC2D0002
15.212	PETITION FOR ORDERS TO SHOW CAUSE ALLEGING THAT PRODUCTION OF WIRELESS AUDITORY TRAINING MICROPHONES ARE IN VIOLATION OF THE RULES, AND FOR A CEASE & DESIST ORDER. DISMISSED. SINCE AN AGREEMENT TO CORRECT AND COMPLY HAS BEEN MADE. ***ELECTRONIC FUTURES, INC.*** 39FCC2D0141
15.309(B)	SEC. 15.309(B) AMENDED TO FURTHER SUPPRESS SPURIOUS EMISSIONS FROM SENSORS OPERATING 915, 2450 AND 5800 MHZ BANDS. REQUEST FOR WAIVER OF AMENDED RULE DENIED. ***FIELD DISTRUBANCE SENSORS*** 39FCC2D0713
15.363	PETITIONS FOR RECONSIDERATION OF AMENDMENT OF PART 15 (35 FCC 2D 677) TO PROVIDE REGULATIONS FOR THE OPERATION OF WIRELESS AUDITORY TRAINING SYSTEMS WITHOUT INDIVIDUAL LICENSES IN THE 72-73 MHZ AND 75.4-76 MHZ BANDS DENIED BUT MEASUREMENT PROCEDURE CLARIFIED. ***AUDITORY TRAINING DEVICES*** 39FCC2D0983
15.365	PETITIONS FOR RECONSIDERATION OF AMENDMENT OF PART 15 (35 FCC 2D 677) TO PROVIDE REGULATIONS FOR THE OPERATION OF WIRELESS AUDITORY TRAINING SYSTEMS WITHOUT INDIVIDUAL LICENSES IN THE 72-73 MHZ AND 75.4-76 MHZ BANDS DENIED BUT MEASUREMENT PROCEDURE CLARIFIED. ***AUDITORY TRAINING DEVICES*** 39FCC2D0983
15.377	PETITIONS FOR RECONSIDERATION OF AMENDMENT OF PART 15 (35 FCC 2D 677) TO PROVIDE REGULATIONS FOR THE OPERATION OF WIRELESS AUDITORY TRAINING SYSTEMS WITHOUT INDIVIDUAL LICENSES IN THE 72-73 MHZ AND 75.4-76 MHZ BANDS DENIED BUT MEASUREMENT PROCEDURE CLARIFIED. ***AUDITORY TRAINING DEVICES*** 39FCC2D0983
15.407	PETITION FOR RECONSIDERATION REQUESTING EXTENSION OF WAIVERSOF SECS. 2.805 AND 15.7 PERMITTING MARKETING OF CLASS I TV DEVICES AND SEC. 15.407 REQUIRING SAID DEVICES TO BE EQUIPPED WITH A RECEIVER TRANSFER SWITCH HAVING A 60 DB ISOLATION. GRANTED SINCE TIMETABLES PRESENTED INDICATE UNDUE HARDSHIP WOULD RESULT TO MANUFACTURERS WITHOUT EXTENSION OF WAIVERS. ***CLASS I TV DEVICE*** 39FCC2D0689

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63.60	PETITION FOR RECONSIDERATION OF RESTRICTIVE CONDITIONS IN GRANT OF AUTHORITY TO SUPPLEMENT EXISTING INTERSTATE AND FOREIGN SPECIALIZED COMMUNICATIONS SERVICES GRANTED, AND CONDITIONS DELETED, SINCE THEY NO LONGER APPEAR NECESSARY IN LIGHT OF MORE RECENT POLICY DETERMINATIONS AND RULE CHANGES IN THE CATV FIELD ***COMMUNICATIONS INTERSTATE OR FOREIGN*** 39FCC2D0131
63.90	PETITION FOR RECONSIDERATION OF RESTRICTIVE CONDITIONS IN GRANT OF AUTHORITY TO SUPPLEMENT EXISTING INTERSTATE AND FOREIGN SPECIALIZED COMMUNICATIONS SERVICES GRANTED, AND CONDITIONS DELETED, SINCE THEY NO LONGER APPEAR NECESSARY IN LIGHT OF MORE RECENT POLICY DETERMINATIONS AND RULE CHANGES IN THE CATV FIELD. ***COMMUNICATIONS INTERSTATE OR FOREIGN*** 39FCC2D0131
64.601	APPLICATION FOR TAX CERTIFICATE GRANTED SINCE DIVESTITURE WAS REQUIRED BY SEC. 64.601 TO ELIMINATE CROSS OWNERSHIP, AND INTERESTS IN BOTH LAND-LINE COMMON CARRIER TELEPHONE SERVICES AND CABLE TELEVISION SYSTEMS IN ONE AREA MEETS THE REQUIREMENTS OF SEC. 1071 OF THE INTERNAL REVENUE CODE. ***MID-TEXAS COMM. SYSTEMS, INC.*** 39FCC2D0175
72.202(B)	FM TABLE OF ASSIGNMENTS (SEC. 73.202(B)) AMENDED BY ADDING ATHIRD CHANNEL TO LA CROSSE, WIS. SINCE IN THE PUBLIC INTEREST. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D0147
73.24	PART 73 OF THE RULES AMENDED REGARDING AM STATION ASSIGNMENTSTANDARDS AND THE RELATIONSHIP BETWEEN THE AM AND FM BROADCAST SERVICES. ***B/CST STATION ASSIGNMENT STANDARDS*** 39FCC2D0645
73.30	PART 73 OF THE RULES AMENDED REGARDING AM STATION ASSIGNMENTSTANDARDS AND THE RELATIONSHIP BETWEEN THE AM AND FM BROADCAST SERVICES. ***B/CST STATION ASSIGNMENT STANDARDS*** 39FCC2D0645
73.35	APPLICATION FOR TRANSFER OF CONTROL AND FOR WAIVER OF SECTIONS 73.35, 73.240 AND 73.636 ONE-TO-A-MARKET WHERE ACQUISITION WILL RESULT IN COMMON OWNERSHIP OF AURAL AND TELEVISION FACILITIES IN THE SAME MARKET, GRANTED AND TRANSFER APPROVED SINCE IT FURTHERS DIVERSITY IN MASS MEDIA. ***R. W. PAGE CORPORATION*** 39FCC2D0487
	APPLICATION PREVIOUSLY DISMISSED (27FCC2D66) ON DUOPOLY RULE(SEC. 73.35) REINSTATED AND DESIGNATED FOR HEARING ON ISSUES AS TO FINANCIAL, AREAS AND POPULATIONS, 307(B), OVERLAP, AND COMMUNITY NEEDS. REQUESTS FOR WAIVER OF SECS. 1.580(B), 1.580(B), 1.569(B)(2)(I) (TRANSMITTER SITE LOCATION) AND SECS. 1.571(C) AND 1.227(B)(1) ARE GRANTED. ***QUINNIPIAC VALLEY SERVICE, INC.*** 39FCC2D0948
73.37	PART 73 OF THE RULES AMENDED REGARDING AM STATION ASSIGNMENTSTANDARDS AND THE RELATIONSHIP BETWEEN THE AM AND FM BROADCAST SERVICES. ***B/CST STATION ASSIGNMENT STANDARDS*** 39FCC2D0645

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73.67(A)(6)	REQUEST FOR REDUCTION OF FORFEITURE AMOUNT IMPOSED FOR VIOLATION OF PROVISIONS OF STATION AUTHORIZATION, SECTIONS 73.67(A)(6), 73.93(E), 73.111(A) AND 301 DENIED SINCE THE FORFEITURE PROVISIONS ARE PUNITIVE NOT EDUCATIONAL AS PROPOSED, AND A LICENSEE IS RESPONSIBLE FOR ITS EMPLOYEES ACTION. ***WEST JERSEY B/CING CO.*** 39FCC2D0540
73.87	FORFEITURE OF 800 ORDERED FOR REPEATED VIOLATIONS OF SEC. 73.87 (OPERATION FROM 6 A.M. WITH NONDIRECTIONAL DAYTIME MODE AND POWER, PRIOR TO THE SUNRISE TIMES SPECIFIED IN LICENSE) AND SEC. 73.111(A) (FAILURE TO KEEP MAINTENACE LOGS). ***HEART OF THE BLACK HILLS STATION*** 39FCC2D1045
73.93(E)	REQUEST FOR REDUCTION OF FORFEITURE AMOUNT IMPOSED FOR VIOLATION OF PROVISIONS OF STATION AUTHORIZATION, SECTIONS 73.67(A)(6), 73.93(E), 73.111(A) AND 301 DENIED SINCE THE FORFEITURE PROVISIONS ARE PUNITIVE NOT EDUCATIONAL AS PROPOSED, AND A LICENSEE IS RESPONSIBLE FOR ITS EMPLOYEES ACTION. ***WEST JERSEY B/CING CO.*** 39FCC2D0540
73.111(A)	REQUEST FOR REDUCTION OF FORFEITURE AMOUNT IMPOSED FOR VIOLATION OF PROVISIONS OF STATION AUTHORIZATION, SECTIONS 73.67(A)(6), 73.93(E), 73.111(A) AND 301 DENIED SINCE THE FORFEITURE PROVISIONS ARE PUNITIVE NOT EDUCATIONAL AS PROPOSED, AND A LICENSEE IS RESPONSIBLE FOR ITS EMPLOYEES ACTION. ***WEST JERSEY B/CING CO.*** 39FCC2D0540
	FORFEITURE OF 800 ORDERED FOR REPEATED VIOLATIONS OF SEC. 73.87 (OPERATION FROM 6 A.M. WITH NONDIRECTIONAL DAYTIME MODE AND POWER, PRIOR TO THE SUNRISE TIMES SPECIFIED IN LICENSE) AND SEC. 73.111(A) (FAILURE TO KEEP MAINTENACE LOGS). ***HEART OF THE BLACK HILLS STATION*** 39FCC2D1045
73.112(A)(2)(I)(I)	FORFEITURE FOR VIOLATING OF SEC. 73.112(A)(2)(II), (LOGGING THE DURATION OF COMMERCIALS), AND SECS. 73.119 AND 317 FOR FAILURE TO GIVE THE REQUIRED SPONSOR IDENTIFICATION SINCE THE VIOLATIONS ARE REPORTED. ***GROSSCO, INC.*** 39FCC2D0589
73.119	FORFEITURE FOR VIOLATING OF SEC. 73.112(A)(2)(II), (LOGGING THE DURATION OF COMMERCIALS), AND SECS. 73.119 AND 317 FOR FAILURE TO GIVE THE REQUIRED SPONSOR IDENTIFICATION SINCE THE VIOLATIONS ARE REPORTED. ***GROSSCO, INC.*** 39FCC2D0589
	FORFEITURE OF 3,000 ORDERED FOR REPEATED VIOLATIONS OF SEC 317 AND SEC. 73.119 SPONSORSHIP IDENTIFICATION OF COMMERCIAL ANNOUNCEMENTS . ***METRO COMMUNICATIONS, INC.*** 39FCC2D1053
73.122	PETITION TO ENLARGE ISSUES, GRANTED WITH RESPECT TO MISREPRESENTATION AND ALLEGED BROADCASTING OF LOTTERY INFORMATION SEC. 73.122 AND THE EFFECT THEREOF ON RENEWAL APPLICATION SINCE SUFFICIENT ALLEGATIONS WERE RAISED. ***FRIENDLY BROADCASTING CO.*** 39FCC2D0458

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73.123(A) COMPLAINT ALLEGING FAILURE TO COMPLY WITH FAIRNESS DOCTRINE CONCERNING A PERSONAL ATTACK ON A PUBLIC OFFICIAL IN A POLITICAL EDITORIAL DISMISSED, SINCE THE STATION COMPLIED WITH ALL SECTION 73.123(A) REQUIREMENTS AND IT IS NOT THE COMMISSIONS RESPONSIBILITY TO DETERMINE THE TRUTH OR FALSITY OF A BROADCAST. ***SNYDER, ARTHUR K.*** 39FCC2D0446

73.123(C) COMPLIANCE CONCERNING 315 POLITICAL BROADCASTS DISMISSED SINCE EQUAL TIME IS NOT REQUIRED TO A BONA FIDE NEWSCAST OF A CANDIDATE, AND NO EVIDENCE REGARDING A PERSONAL ATTACK ON HONESTY, CHARACTER OR INTEGRITY HAS BEEN PROVIDED, AND 73.123(C) ONLY REQUIRES AN OPPORTUNITY TO RESPOND TO AN AUTHORIZED EDITORIAL OF ENDORSEMENT. ***RIHERD, MRS. CARMEN C.*** 39FCC2D0617

73.125(C) APPLICATIONS REQUESTING AUTHORITY TO OPERATE STATION ACCEPTED FOR FILING SINCE IN CONFORMITY WITH COMMISSION RULES, EXCEPT FOR ONE WHICH IS ACCEPTED ON CONDITION THAT WITHIN 30 DAYS IT SHALL BE AMENDED TO INCLUDE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM ON SECTION VI OF FCC FORM 301 IN ACCORDANCE WITH REQUIREMENTS OF SEC. 73.125(C). 73.125 C . ***W.M.E.D. ASSOCIATES, INC.*** 39FCC2D0292

73.182(O) PART 73 OF THE RULES AMENDED REGARDING AM STATION ASSIGNMENTSTANDARDS AND THE RELATIONSHIP BETWEEN THE AM AND FM BROADCAST SERVICES. ***B/CST STATION ASSIGNMENT STANDARDS*** 39FCC2D0645

73.202(B) FM TABLE OF ASSIGNMENTS (SEC. 73.202(B)) IS AMENDED BY ASSIGNING FIRST CHANNELS TO CHATSWORTH, GA., ELDORADO, ILL., CAMDEN, TENN. AND UNION CITY, TENN. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D0150

FM TABLE OF ASSIGNMENTS (SEC. 73.202(B)) AMENDED WITH RESPECT TO CRYSTAL RIVER AND GAINSVILLE, FLORIDA, AND CHARLES CITY, HAMPTON AND PELLA, IOWA. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D0452

FM TABLE OF ASSIGNMENTS (SEC. 73.202(B)) AMENDED TO PROVIDE FIRST LOCAL SERVICE TO UNION SPRINGS, ALA. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D0933

FM TABLE OF ASSIGNMENTS (SEC. 73.202(B)) AMENDED TO PROVIDE CHANNELS 280A AND 292A TO CRAWFORDSVILLE, IND. REQUEST FOR ASSIGNMENT OF THOSE CHANNELS TO WEST LAFAYETTE, IND., DENIED. ***FM TABLE OF ASSIGNMENTS*** 39FCC2D1027

73.21381 APPLICATION FOR WAIVER OF SEC. 73.213(8)(1) (SHORT-SPACING REQUIREMENTS), TO ACCEPT APPLICATION FOR CHANGE OF TRANSMITTER SITE FACILITIES, DENIED AND APPLICATION RETURNED. ***INDEPENDENT MUSIC B/CERS, INC.*** 39FCC2D1050

73.240 APPLICATION FOR TRANSFER OF CONTROL AND FOR WAIVER OF SECTIONS 73.35, 73.240 AND 73.636 ONE-TO-A-MARKET WHERE ACQUISITION WILL RESULT IN COMMON OWNERSHIP OF AURAL AND TELEVISION

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	FACILITIES IN THE SAME MARKET. GRANTED AND TRANSFER APPROVED SINCE IT FURTHERS DIVERSITY IN MASS MEDIA. ***R. W. PAGE CORPORATION*** 39FCC2D0487
73.636	APPLICATION FOR TRANSFER OF CONTROL AND FOR WAIVER OF SECTIONS 73.35, 73.240 AND 73.636 ONE-TO-A-MARKET WHERE ACQUISITION WILL RESULT IN COMMON OWNERSHIP OF AURAL AND TELEVISION FACILITIES IN THE SAME MARKET, GRANTED AND TRANSFER APPROVED SINCE IT FURTHERS DIVERSITY IN MASS MEDIA. ***R. W. PAGE CORPORATION*** 39FCC2D0487
73.654	APPLICATION FOR MITIGATION OF FORFEITURE 37FCC2D518 FOR VIOLATION OF SECS. 317 AND 73.645 INVOLVING SPONSOR IDENTIFICATION AND SEC. 73.1205 FOR CLIPPING CRAWLS CLASSIFIED AS ADVERTISING, DENIED SINCE THE ACTS WERE REPEATED FREQUENTLY. ***CHANNEL 13 OF LAS VEGAS, INC.*** 39FCC2D0128
73.657(A)	COMPLAINT CONCERNING EQUAL TIME PROVISIONS OF SECTION 315 DENIED SINCE NON OF THE APPLICANTS WERE LEGALLY QUALIFIED CANDIDATES UNDER STATE OR NATIONAL REQUIREMENTS, OR UNDER SECTION 73.657(A), AND SINCE NEITHER HAD ARRIVED AT THE PRESCRIBED AGE FOR CANDIDATES FOR PRESIDENT AND VICE PRESIDENT. ***SOCIALIST WORKER PARTY 1972*** 39FCC2D0089
73.657(A)(2)	COMPLAINT CONCERNING SECTION 315 EQUAL OPPORTUNITY RULING DISMISSED SINCE LICENSEE DID NOT INTENTIONALLY DISCRIMINATE BY FIRST ADVISING COMPLAINANT THAT NO SPOT ANNOUNCEMENTS WOULD BE AVAILABLE FOR HIS PRIMARY RACE, WHICH ADVICE WAS IN ERROR, AND ALLOWING HIS OPPONENT TIME. LICENSEE FOUND TO BE IN VIOLATION OF SEC. 73.657(A)(2). ***HARRISON, JAMES L.*** 39FCC2D0504
73.658(K)	PUBLIC NOTICE OF A REQUEST FOR WAIVER OF THE PRIME TIME ACCESS RULE, 73.658(K), TO PERMIT A NETWORK TO PRESENT A HALF-HOUR WEEKLY CHILDRENS PROGRAM, IS GIVEN TO ALLOW INTERESTED PARTIES OPPORTUNITY TO COMMENT. ***PRIME TIME ACCESS RULE*** 39FCC2D0079
	REQUESTS FOR WAIVER OF SEC. 73.0658(K) (PRIME TIME ACCESS RULE) TO ALLOW COMPLETE AIRING OF MAJOR SPORTS EVENTS GRANTED. ENTIRE EVENT MAY BE TELECAST BUT NOT INCLUDING ANY POST-GAME MATERIAL. ***PRIME TIME ACCESS RULE*** 39FCC2D0945
73.658(K)(3)	THE PRIME TIME ACCESS RULE (SEC. 73.658(K)(3)), IS CLARFIED TO ALLOW THE PRESENT PRACTICE OF SHOWING MOVIES, PREVIOUSLY SHOWN ON A NETWORK MORE THAN TWO YEARS AGO, DURING THAT PORTION OF PRIME TIME FROM WHICH NETWORK PROGRAMS ARE EXCLUDED, PENDING RULE MAKING PROCEEDINGS. ***PRIME TIME ACCESS RULE*** 39FCC2D0080
73.670(A)(2)	A PROGRAM SPONSORED BY AN ASSOCIATION OF DEALERS IN WHICH VARIOUS PRODUCTS OF THE ASSOCIATION ARE MENTIONED, AND IN WHICH NO COMMERCIAL TIME IS LOGGED, IS HELD TO BE A

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VIOLATION OF SEC. 73.670(A)(2). ***TAFT B/CING CO.*** 39FCC2D1070

73.1205 APPLICATION FOR MITIGATION OF FORFEITURE 37FCC2D518 FOR VIOLATION OF SECS. 317 AND 73.645 INVOLVING SPONSOR IDENTIFICATION AND SEC. 73.1205 FOR CLIPPING CRAWLS CLASSIFIED AS ADVERTISING, DENIED SINCE THE ACTS WERE REPEATED FREQUENTLY. ***CHANNEL 13 OF LAS VEGAS, INC.*** 39FCC2D0128

74. PART 74 AND SEC. 78.109 (A) AMENDED AS TO APPLICATIONS FOR CHANGES IN HEIGHT OR DIRECTION OF ANTENNAS. ***EQUIPMENT CHANGES*** 39FCC2D0924

74.631(D) REQUEST FOR WAIVER OF SEC. 74.631(D) CONCERNING THE MULTIPLEXING OF ADDITIONAL EDUCATIONAL PROGRAM MATERIAL GRANTED, PROVIDED THE TELEVISION INTERCITY RELAY SYSTEM DOES NOT OPERATE SOLELY TO RELAY THIS SIGNAL. ***WGBH EDUCATIONAL FOUNDATION*** 39FCC2D0115

74.1105(A) EXCEPTIONS TO INITIAL DECISION ISSUING CEASE AND DESIST ORDER FOR VIOLATION OF SEC. 74.1105(A) (CARRYING TV SIGNALS WITHOUT PROPER NOTICE) DENIED SINCE, UNTIL A CABLE TELEVISION SYSTEM COMPLIED WITH THIS RULE, THE MERITS OF ITS SERVICE WILL NOT BE CONSIDERED. ***TELE-CEPTION OF WINCHESTER, INC.*** 39FCC2D0280

APPLICATION FOR CERTIFICATE OF COMPLIANCE TO BEGIN CABLE TV SERVICE GRANTED, SINCE COMPLIANCE WITH FORMER SEC. 74.1105 (A) (TIME FOR FILING) RUNS FROM THE DATE NOTICE WAS FILED WITH THE COMMISSION, THUS ESTABLISHING A GRANDFATHERED AUTHORIZATION. ***GREATER LAWRENCE COMM. ANTENNA, INC.*** 39FCC2D0935

74.1107(A) APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE, WHICH REQUESTED WAIVER OF FORMER SEC. 74.1107(A) TO CARRY DISTANT IN-STATE EDUCATIONAL SIGNAL, WAS UNOPPOSED BY LOCAL EDUCATIONAL STATION AT THE TIME, AND THE SIGNALS ARE NOW GRANDFATHERED. ***ORANGE CABLEVISION, INC.*** 39FCC2D0073

76.5 APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND PETITION FOR SPECIAL RELIEF GRANTED TO ALLOW WAIVER OF SEC. 76.5 AND CONSIDERATION OF PROPOSED SERVICE AREA AS WHOLLY OUTSIDE ALL MAJOR AND SMALLER TELEVISION MARKETS. ***VILLAGE CATV, INC.*** 39FCC2D0288

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCETHERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31, THE EARLIER FRANCHISE AGREEMENT WAS PUBLISHED AND A HEARING HELD, AND THE SYSTEM WILL NOT BE LOCATED WITHIN THE 35 MILE SPECIFIED ZONE OF ANY COMMERCIAL TV STATION PURSUANT TO SEC. 76.5. ***SENTINEL COMM. OF MUNCIE, INC.*** 39FCC2D0620

76.5(N) APPLICATION FOR CERTIFICATE OF COMPLIANCE TO ADD ON INDEPENDENT CANDIAN SIGNAL TO A CABLE TELEVISION SYSTEM PURSUANT TO SEC. 76.59 DENIED, SINCE THE STATION PROPOSED IS NOT INDE-

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	PENDENT AS DEFINE BY 76.5(N) IN THAT IT CARRIES OVER 10 HOURS OF MAJOR NETWORK PROGRAMMING DURING PRIME TIME. ***KING VIDEOCABLE CO.*** 39FCC2D0600
76.7	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND FOR PARTIAL WAIVER OF SEC. 76.31 GRANTED, SINCE THERE IS NO APPROPRIATE FRANCHISING AUTHORITY BUT GRANT OF RIGHT OF WAY IS ACCEPTABLE ALTERNATE PROPOSAL, NO AFFIRMATIVE ALLEGATIONS OF SHOTCOMINGS BY APPLICANT WERE ALLEGED IN OPPOSITION, AND THERE HAS BEEN SUBSTANTIAL COMPLIANCE (SEC. 76.7). ***SUN VALLEY CABLE COMM.*** 39FCC2D0105
	PETITION FOR SPECIAL RELIEF REQUESTING CORRECTION OF INADVERTANT OPERATION WITHOUT AUTHORIZATION GRANTED SINCE TO DENY WOULD DEPRIVE SUBSCRIBERS TO PROGRAMMING TO WHICH THEY ARE ACCUMSTOMED WITHOUT GOOD PEASON. ***LAFOURCHE COMM., INC.*** 39FCC2D0472
76.13(A)(4)	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED, SINCE THE AMENDED APPLICATION MEETS ALL OBJECTIONS RAISED CONCERNING COMPLIANCE WITH 76.13(A)(4), (A)(8) AND 76.251 REGARDING ACCESS CHANNELS AND EQUAL EMPLOYMENT OPPORTUNITIES. ***GENERAL ELECTRIC CABLEVISION CORP.*** 39FCC2D0156
76.13(B)(2)	SECTION 76.13(B)(2) SHALL BE APPLIED RETROACTIVELY TO MARCH 31, 1972, CONCERNING AMENDMENT REQUIREMENTS FOR PENDING CABLE TELEVISION APPLICATIONS AND PLEADINGS. ***AMENDMENT REQUIREMENTS, RE CABLE TV*** 39FCC2D0001
76.17	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCEDELETION OF STATION PROPOSED TO BE CARRIED MOOTS ONLY OBJECTION SEC. 76.17 . ***GENERAL ELECTRIC CABLEVISION CORP.*** 39FCC2D0158
76.31	APPLICATION FOR CERTIFICATE OF COMPLIANCE FOR A NEW CABLE TELEVISION SYSTEM GRANTED SINCE THERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH SECTION 76.31 REQUIRING SIGNIFICANT CONSTRUCTION OF STATION WITHIN ONE YEAR. ***LIBERTY COMMUNICATIONS, INC.*** 39FCC2D0050
	APPLICATION FOR CATV CERTIFICATES OF COMPLIANCE GRANTED SINCE THERE IS SUBSTANTIAL COMPLIANCE WITH SEC. 76.31 AND CARRIAGE OF DISTANT IN-STATE EDUCATIONAL SIGNALS IS NOT PROHIBITED SINCE A SPHERE OF INFLUENCE IS NOT RECOGNIZED FOR LOCAL EDUCATIONAL STATION. ***ORANGE CABLEVISION, INC.*** 39FCC2D0071
	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE, WHICH REQUESTED WAIVER OF FORMER SEC. 74.1107(A) TO CARRY DISTANT IN-STATE EDUCATIONAL SIGNAL, WAS UNOPPOSED BY LOCAL EDUCATIONAL STATION AT THE TIME, AND THE SIGNALS ARE NOW GRANDFATHERED. ***ORANGE CABLEVISION, INC.*** 39FCC2D0073
	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCECARRIAGE OF THE DISTANT IN-STATE EDUCATIONAL SIGNALS WAS

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EARLIER AUTHORIZED AND HENCE GRANDFATHERED UNDER COMMISSION RULES. ***ORANGE CABLEVISION, INC*** 39FCC2D0075

APPLICATIONS FOR CATV CERTIFICATE OF COMPLIANCE SEC. 76.31 GRANTED SINCE THE PUBLIC INTEREST DOES NOT REQUIRE A SPHERE OF INFLUENCE TO PREVENT IMPORTATION OF IN-STATE EDUCATIONAL STATIONS AND OBJECTIONS WERE UNTIMELY RAISED. ***SEMINOLE CABLEVISION, INC.*** 39FCC2D0096

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE SEC. 76.31 GRANTED SINCE THE PUBLIC INTEREST DOES NOT REQUIRE A SPHERE OF INFLUENCE TO PREVENT IMPORTATION OF IN-STATE EDUCATIONAL STATIONS AND THE OBJECTIONS WERE NOT TIMELY RAISED. ***SEMINOLE CABLEVISION, INC.*** 39FCC2D0098

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND FOR PARTIAL WAIVER OF SEC. 76.31 GRANTED, SINCE THERE IS NO APPROPRIATE FRANCHISING AUTHORITY BUT GRANT OF RIGHT OF WAY IS ACCEPTABLE ALTERNATE PROPOSAL, NO AFFIRMATIVE ALLEGATIONS OF SHOTCOMINGS BY APPLICANT WERE ALLEGED IN OPPOSITION, AND THERE HAS BEEN SUBSTANTIAL COMPLIANCE (SEC. 76.7). ***SUN VALLEY CABLE COMM.*** 39FCC2D0105

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCETHERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH SECTION 76.31. ***TRI-CITIES CABLE CO., INC.*** 39FCC2D0108

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCETHERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH SECTION 76.31. ***TRI-CITIES CABLE CO., INC.*** 39FCC2D0110

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED, SINCE THE AMENDED APPLICATION MEETS ALL OBJECTIONS RAISED CONCERNING COMPLIANCE WITH 76.13(A)(4), (A)(8) AND 76.251 REGARDING ACCESS CHANNELS AND EQUAL EMPLOYMENT OPPORTUNITIES. ***GENERAL ELECTRIC CABLEVISION CORP.*** 39FCC2D0156

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCEIN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31 REQUIREMENTS. ***TRI-CITIES CABLE CO., INC.*** 39FCC2D0286

FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCE SUBSTANTIALCOMPLIANCE HAS BEEN MADE IN AMENDED APPLICATION, WHICH PROVIDES FOR A LOCAL OFFICE AND FOR MAINTENANCE OF A COMPLAINT LOG. SEC. 76.31 . ***CABLE TELESYSTEMS OF N.J.*** 39FCC2D0547

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCEIN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31. ***MORGAN COUNTY TELECABLE, INC.*** 39FCC2D0605

APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCETHERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31, THE EARLIER FRANCHISE AGREEMENT WAS PUBLISHED AND A

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	HEARING HELD, AND THE SYSTEM WILL NOT BE LOCATED WITHIN THE 35 MILE SPECIFIED ZONE OF ANY COMMERCIAL TV STATION PURSUANT TO SEC. 76.5. ***SENTINEL COMM. OF MUNCIE, INC.*** 39FCC2D0620
	APPLICATION FOR CERTIFICATE OF COMPLIANCE TO OPERATE A CABLETELEVISION SYSTEM FOR CERTAIN UNINCORPORATED AREAS OF SAN JOACHIM VALLEY, CAL., GRANTED SINCE IN SUBSTANTIAL COMPLIANCE WITH REQUIREMENTS OF SEC. 76.31. ***BIG VALLEY CABLEVISION, INC.*** 39FCC2D0642
	APPLICATION FOR CERTIFICATE OF COMPLIANCE FOR NEW CABLE TELEVISION SYSTEMS AT CERES AND STANISLAUS COUNTY, CAL. GRANTED SINCE IN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31. ***CERIS CABLE CO., INC.*** 39FCC2D0686
	APPLICATION FOR CERTIFICATE OF COMPLIANCE TO NEW CATV SYSTEMGRANTED SINCE IN SUBSTANTIAL COMPLIANCE WITH SEC. 76.31. ***LVO CABLE, INC.*** 39FCC2D0784
	APPLICATION FOR 3 CERTIFICATES OF COMPLIANCE SEC. 76.31 FOR NEW 20 CHANNEL CABLE TV SYSTEMS TO OPERATE FROM WENONA, MINOK AND TOLUCA, ILL., GRANTED. ***TRI-COUNTY CABLE TV C., INC.*** 39FCC2D0833
	APPLICATION FOR CERTIFICATE OF COMPLIANCE TO OFFER CABLE TV SERVICE TO A SMALL COMMUNITY GRANTED, SINCE ALLEGATIONS OF INVALID FRANCHISE ARE UNSUBSTANTIATED. (SEC. 76 31). ***FLAGLER CABLE CO., INC.*** 39FCC2D0930
	APPLICATION FOR CERTIFICATE OF COMPLIANCE FOR CABLE TV SYSTEM TO OPERATE IN OHIO GRANTED, SINCE THE AREA INVOLVED DOES NOT ISSUE FRANCHISES OR OTHER JURISDICTIONAL AUTHORIZATION. ***MAHONING VALLEY CABLEVISION, INC.*** 39FCC2D0939
76.31(A)(4)	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED FOR ASHORT TERM, SUBJECT TO A SELECTION OF WHICH INDEPENDENT STATION IT WILL CARRY, SINCE IT IS NOT CLEAR WHETHER THE FRANCHISING AUTHORITY HAS CONTROL OVER SUBSCRIBER RATES. REQUESTED WAIVER OF 76.61(B)(2) TO ALLOW CARRIAGE OF 4 RATHER THAN 3 INDEPENDENT SIGNALS DENIED. ***SARATOGA CABLE TV CO., INC.*** 39FCC2D0611
76.31(B)	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED PROVIDED CHANNELS CARRIED ARE CONSISTENT WITH SECTION 76.61 (B)(2) REQUIRING THAT THE TWO CLOSET MARKETS IN THE FIRST 25 MAJOR MARKETS AND ONE INDEPENDENT UHF STATION WITHIN 200 AIR MILES. ARE CARRIED. ***CAPITOL DISTRICT BETTER T.V., INC.*** 39FCC2D0013
76 59	APPLICATION FOR CERTIFICATE OF COMPLIANCE TO ADD ON INDEPENDENT CANDIAN SIGNAL TO A CABLE TELEVISION SYSTEM PURSUANT TO SEC. 76.59 DENIED, SINCE THE STATION PROPOSED IS NOT INDEPENDENT AS DEFINE BY 76.5(N) IN THAT IT CARRIES OVER 10 HOURS OF MAJOR NETWORK PRO-

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	GRAMMING DURING PRIME TIME. ***KING VIDEOCABLE CO.*** 39FCC2D0600
76.59(D)(2)	INTERPRETIVE RULING THAT UNDER SECTION 76.59 (D)(2) CABLE SYSTEMS MAY NOT IMPORT A DISTANT NETWORK TELEVISION STATION NOT NORMALLY CARRIED ON THE SYSTEM, BROADCASTING A BLACKED OUT SPORTS PROGRAM. ***SCRIPPS-HOWARD B/CING CO.*** 39FCC2D0502
76.61(B)(2)	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED PROVIDED CHANNELS CARRIED ARE CONSISTENT WITH SECTION 76.61 (B)(2) REQUIRING THAT THE TWO CLOSET MARKETS IN THE FIRST 25 MAJOR MARKETS AND ONE INDEPENDENT UHF STATION WITHIN 200 AIR MILES. ARE CARRIED ***CAPITOL DISTRICT BETTER T.V., INC.*** 39FCC2D0013
	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED FOR ASHORT TERM, SUBJECT TO A SELECTION OF WHICH INDEPENDENT STATION IT WILL CARRY, SINCE IT IS NOT CLEAR WHETHER THE FRANCHISING AUTHORITY HAS CONTROL OVER SUBSCRIBER RATES. REQUESTED WAIVER OF 76.61(B)(2) TO ALLOW CARRIAGE OF 4 RATHER THAN 3 INDEPENDENT SIGNALS DENIED. ***SARATOGA CABLE TV CO., INC.*** 39FCC2D0611
	APPLICATION FOR CERTIFICATE OF COMPLIANCE AND FOR WAIVER OF SEC. 76.61(B)(2). REQUIRING THAT THE FIRST TWO DISTANT INDEPENDENT SIGNALS CARRIED BY A CABLE SYSTEM MUST BE SELECTED FROM THE CLOSEST TWO OF THE TOP 25 TELEVISION MARKETS. GRANTED TO ALLOW ADDITIONAL CHANNELS SINCE THE DISTANT HERE IS SMALL. ***WESTERN TV CABLE CORP.*** 39FCC2D0624
76.65	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE IS GRANTED SINCE PROPER NOTICE OF PROPOSAL TO ADD CHANNELS WAS SERVED UNDER FORMER SECTION 74.1105 AND NO OBJECTIONS WERE RAISED AND THUS THE PROPOSED SIGNALS BECAME AUTHORIZED, EVEN THOUGH NOT YET IN OPERATION, AND GRANDFATHERED UNDER SECTION 76.65. ***FORT SMITH TV CABLE CO.*** 39FCC2D0573
76.91	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND WAIVER OFSEC. 76.251 SEPARATE ACCESS CHANNELS AND SEC. 76.91 PROGRAM EXCLUSIVITY REQUIREMENTS GRANTED BUT ONLY PARTIAL WAIVERS APPROVED TO BE REMOVED AFTER 500 SUBSCRIBERS ARE OBTAINED. ***STARK COUNTY COMM., INC.*** 39FCC2D0274
	APPLICATION FOR WAIVER OF PROGRAM EXCLUSIVITY RULE, 76.91, CONCERNING CABLE TELEVISION SERVICE IS ALLOWED AND CERTIFICATE OF COMPLIANCE GRANTED DUE TO THE SMALL SYSTEM INVOLVED AND UNTIL 500 SUBSCRIBERS ARE OBTAINED. ***PARSEN ELECTRIC CO.*** 39FCC2D0491
76.93	PETITION BY CATV SYSTEM FOR SPECIAL RELIEF SEEKING WAIVER OFSEC. 76.93 TO ALLOW FOR SIMULTANEOUS ONLY EXCLUSIVITY RATHER THAN SAME DAY EXCLUSIVITY DENIED SINCE SUCH CHANGE WOULD RESULT IN A 55(LOSS OF PRIME TIME HOURS. ***MAGIC VALLEY CABLE VISION, INC.*** 39FCC2D0166

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76.251	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED, SINCE THE AMENDED APPLICATION MEETS ALL OBJECTIONS RAISED CONCERNING COMPLIANCE WITH 76.13(A)(4), (A)(8) AND 76.251 REGARDING ACCESS CHANNELS AND EQUAL EMPLOYMENT OPPORTUNITIES. ***GENERAL ELECTRIC CABLEVISION CORP.*** 39FCC2D0156
	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND WAIVER OFSEC. 76.251 SEPARATE ACCESS CHANNELS AND SEC. 76.91 PROGRAM EXCLUSIVITY REQUIREMENTS GRANTED BUT ONLY PARTIAL WAIVERS APPROVED TO BE REMOVED AFTER 500 SUBSCRIBERS ARE OBTAINED. ***STARK COUNTY COMM., INC.*** 39FCC2D0274
	APPLICATION FOR CERTIFICATE OF COMPLIANCE AND FOR PARTIAL WAIVER OF SEC. 76.251 SEPARATE ACCESS CHANNELS IN EACH COMMUNITY GRANTED AND CERTIFICATES OF COMPLIANCE APPROVED SINCE SMALL SYSTEMS LOCATED IN MAJOR MARKETS WILL BE SPARED THE EXPENSE OF FULL COMPLIANCE FOR SMALL COMMUNITIES. ***REGIONAL CABLE CORPORATION*** 39FCC2D0494
76.251(A)	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE AND THE ADDITION OF CHANNELS GRANTED SINCE THE SYSTEM IS GRANDFATHERED UNDER THE RULES, HOWEVER, BOTH PUBLIC ACCESS AND EDUCATIONAL ACCESS CHANNELS MUST BE PROVIDED AND THE EDUCATIONAL CHANNEL MUST BE SPECIFICALLY DESIGNATED FOR USE BY THE LOCAL EDUCATIONAL AUTHORITIES, PURSUANT TO SEC. 76.251(A). ***METRO CABLE CO.*** 39FCC2D0169
76.501	TAX CERTIFICATE ISSUED FOR SALE OF INTEREST IN A CABLE TELEVISION SYSTEM PURSUANT TO THE PROHIBITIONS OF 76.501 AGAINST CROSS OWNERSHIP OF CABLE SYSTEMS AND TELEVISION BROADCAST STATIONS. ***COX-COSMOS, INC.*** 39FCC2D0139
	PETITION FOR RECONSIDERATION OF SECOND REPORT AND ORDER IN DOCKET NO. 18397, 23 FCC2D816 , ADOPTING SEC. 76.501 REGARDING DIVESTITURE REQUIREMENTS FOR CABLE TELEVISION CROSS-OWNERSHIP, DENIED EXCEPT TO EXTEND THE GRACE PERIOD TO AUGUST 10, 1975, AND TO ENCOURAGE THE FILING OF WAIVER PETITIONS. ***CABLE TELEVISION CROSS-OWNERSHIP*** 39FCC2D0377
	APPLICATION FOR ISSUANCE OF TAX CERTIFICATE FOR SALE OF INTEREST IN A CABLE TV SYSTEM BY A BROADCAST LICENSEE GRANTED AND REQUESTED CERTIFICATE ISSUED TO CONFORM WITH DIVESTITURE REQUIREMENTS OF SEC. 76.501. ***FISHERS BLEND STATION, INC.*** 39FCC2D0927
76.501(A)	APPLICATION FOR CATV CERTIFICATE OF COMPLIANCE GRANTED SINCETHE EVENTUAL NEED TO COMPLY WITH THE CROSS-OWNERSHIP RULES. SECTION 76.501(A), IS NOT SUFFICIENT REASON TO DELAY SYSTEM OPERATION. ***VALLEY CABLEVISION CORP.*** 39FCC2D0113
76.601	PETITION FOR EXTENSION OF TIME FOR INITIAL COMPLIANCE WITH 76.601 CABLE TELEVISION PERFORMANCE TESTS GRANTED TO ALLOW FURTHER TIME FOR DISSEMINATION OF TESTING

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	TECHNIQUES, ACQUISITION OF EQUIPMENT, AND TRAINING OF ENGINEERS. ***CABLE TV PERFORMANCE TESTS*** 39FCC2D0126
78.1	APPLICATION FOR WAIVER OF RULE 78.1 TO ALLOW RELAY OF FEATURE FILMS AND SPORTING EVENTS OVER A ONE CHANNEL, THREE HOP MICROWAVE COMMUNICATION FACILITY IN THE CABLE TELEVISION RELAY SERVICE TO UNAFFILIATED CABLE TELEVISION SYSTEMS GRANTED. ***STERLING COMMUNICATIONS, INC.*** 39FCC2D0101
78.109(A)	PART 74 AND SEC. 78.109 (A) AMENDED AS TO APPLICATIONS FOR CHANGES IN HEIGHT OR DIRECTION OF ANTENNAS. ***EQUIPMENT CHANGES*** 39FCC2D0924
87.	PARTS 1, 2 AND 87 OF THE RULES AMENDED TO PROVIDE FOR LICENSING, TESTING AND OPERATION OF AN EMERGENCY LOCATOR TRANSMITTER AND TO SPECIFY FREQUENCIES AVAILABLE FOR ITS USE. ***EMERGENCY LOCATOR TRANSMITTERS*** 39FCC2D1004
89.101	PETITION FOR NOTICE OF PROPOSED RULE MAKING TO AMEND PARTS 8, 9, 91, AND 93 RELATING TO USE OF FREQUENCY PAIR AND AMENDING SECTION 91.504 TO ALLOW ITINERANT FIXED OPERATIONS GRANTED. ***FREQUENCY PAIR 451.800456.800 MHZ*** 39FCC2D0152
89.257	NOTICE OF PROPOSED RULE MAKING TO AMEND SEC. 89.257 CONCERNING MOBILE COMMUNICATIONS UNITS LICENSED IN THE LOCAL GOVERNMENT RADIO SERVICE TO PERMIT EMERGENCY VEHICLES AND COMMUNICATIONS RELATED TO GOVERNMENTAL FUNCTIONS TO THE USE OF LOCAL GOVERNMENT FREQUENCIES. ***LOCAL GOVT SERVICE MOBILE STATIONS*** 39FCC2D0164
91.504	PETITION FOR NOTICE OF PROPOSED RULE MAKING TO AMEND PARTS 8, 9, 91, AND 93 RELATING TO USE OF FREQUENCY PAIR AND AMENDING SECTION 91.504 TO ALLOW ITINERANT FIXED OPERATIONS GRANTED. ***FREQUENCY PAIR 451.800456.800 MHZ*** 39FCC2D0152
93.101	PETITION FOR NOTICE OF PROPOSED RULE MAKING TO AMEND PARTS 8, 9, 91, AND 93 RELATING TO USE OF FREQUENCY PAIR AND AMENDING SECTION 91.504 TO ALLOW ITINERANT FIXED OPERATIONS GRANTED. ***FREQUENCY PAIR 451.800456.800 MHZ*** 39FCC2D0152