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FEDERAL COMMUNICATIONS COMMISSION

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F.C.C. 73-1271

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE & TELEGRAPH CO., LONG LINES DEPARTMENT Revisions of Tariff F.C.C. No. 260 Private Line Services, Series 5000 (TELPAK)	Docket No. 18128
AMERICAN TELEPHONE & TELEGRAPH CO. Revision of American Telephone & Telegraph Co., Tariff F.C.C. No. 260 Series 6000 and 7000 Channels (Program Transmission Services)	Docket No. 18684

ORDER

(Adopted December 5, 1973; Released December 11, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. In our Memorandum Opinion and Order of May 15, 1973 in Docket No. 18684, 40 FCC 2d 901, we set for oral argument *en banc* certain questions concerning the lawfulness of tariff changes relating to television program transmission services and facilities that had been proposed by the American Telephone and Telegraph Company and which are presently scheduled to go into effect on December 13, 1973.

2. After oral argument on June 26, 1973, we instructed the Chief, Common Carrier Bureau, to explore the possibility of reaching agreement among the parties appearing at oral argument on substitute revisions in the tariffs for this service that would be acceptable to all such parties in lieu of the tariff revisions that would otherwise become effective on December 13, 1973.

3. We have before us a Stipulation signed by the Chief, Common Carrier Bureau, and parties participating in oral argument before us in which all have agreed upon such substitute tariff revisions and in which all parties have agreed to waive a decision by the Commission on the merits of the questions if the Stipulation is accepted by the Commission. A copy of the Stipulation is attached hereto and incorporated as a part of this order.

4. We believe that the public interest will be served by our accepting the Stipulation and terminating the proceedings in Docket No. 18684 without any decision by us on the merits of the issues in that Docket as provided for in the Stipulation.

5. Accordingly, IT IS ORDERED, That special permission IS HEREBY GRANTED TO AT&T to file on less than 30 days' notice the substitute tariffs described in the attached Stipulation in lieu of

the AT&T tariff revisions (T. L. 11854) presently scheduled to become effective December 13, 1973 and, as provided in the Stipulation, the requirements in Part 61 of the rules for the submission of supporting data for such substitute tariffs ARE HEREBY WAIVED: and

6. IT IS FURTHER ORDERED, That the proceedings in Docket No. 18684 ARE HEREBY TERMINATED.[1]

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[1] In view of our action herein, the "Petition for Suspension of Tariff Schedule" filed by Westinghouse Broadcasting Company, Inc. on November 2, 1973 to suspend the $1.00 occasional rate is dismissed as moot.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE & TELEGRAPH CO. (AT & T) Revision of American Telephone & Telegraph Co., Tariff F.C.C. No. 260 Series 6000 and 7000 Channels (Program Transmission Services)	Docket No. 18684

STIPULATION

The undersigned parties and the Chief, Common Carrier Bureau, hereby stipulate that, in settlement of the above-captioned proceeding, they have agreed to the filing of rates and related provisions set forth hereinafter as recommended and proposed by the Common Carrier Bureau. By such stipulation and agreements, the parties waive a decision by the Commission on the questions set forth in the Commission's Memorandum Opinion and Order released herein on May 15, 1973, 49 F.C.C. 2d 901 (1973), and agree that the proceedings in this docket should be terminated upon acceptance by the Commission of this stipulation and the agreements by the parties and the Common Carrier Bureau [1] set forth below:

1. American Telephone and Telegraph Company (AT&T) will modify its Tariff F.C.C. No. 260 by filing, upon receipt of the Commission's approval of this stipulation, appropriate revised tariff pages, to be effective on at least one day's notice which will:

(a) cancel the rate of $1.00 per mile per hour for occasional Interexchange Channels (IXC) in the Series 7000 service which rate was filed under Transmittal No. 11854 dated September 13, 1973, to become effective November 13, 1973, and deferred to December 13, 1973, but otherwise retain the rates filed under Transmittal No. 11854;

(b) substitute for such $1.00 per hour occasional rate a part-time IXC rate of $0.65 per mile per hour per occasion of use to be effective through September 30, 1974, and a part-time IXC rate of $0.75 to be effective October 1, 1974, and thereafter through December 31, 1975, which will be a termination date specified in the tariffs; [2]

(c) establish a recurring part-time IXC service at the rate of $40.00 per mile per month for a consecutive 10-hour period

[1] Upon such termination it is understood that all parties to the consolidated proceeding in F.C.C. Dockets 18128/18684, will continue to be parties to the remaining proceeding in F.C.C. Docket 18128.

[2] The reference to a termination date of December 31, 1975, at this point and in subparagraphs (b), (c) and (d) of paragraph 1 is subject to paragraph 5 hereof, which specifies procedures whereby the applicable rates may be revised effective October 1, 1975, subject to possible suspension by the Commission.

(the same 10 hours daily between the same service points) terminating December 31, 1975. AT&T intends to provide this recurring part-time service from the facilities used to furnish part-time television services. If experience indicates a recurring need for a rate for additional consecutive hours, AT&T will consider the relevant market and cost factors and consider whether such an additional offering should be made;

(d) establish an experimental recurring part-time IXC service at the rate of $15.00 per mile per month for a one-hour period (the same hour daily) through September 30, 1974, and $18.00 to be effective October 1, 1974 through December 31, 1975, which service will not be offered on a coordinated use basis or to customers of full-time IXC service or 10-hour recurring part-time IXC service. This service will be provided, after other part-time service requirements are met, from facilities used to furnish part-time television services. During any day in which facilities are not available for the period requested, the service hour may be shifted to a time period agreed upon by the user and the carrier. If no alternative time period can be agreed upon, service may not be provided and credit will be afforded in accordance with the filed tariff.

Switching charges will apply when full-time local channels are connected to and disconnected from interexchange facilities used for the part-time services, including the 10-hour and the 1-hour recurring part-time service. The tariff as provided in this paragraph 1 will be effective for an interim period through December 31, 1975, subject to the provisions of paragraph 5. The tariff will not provide the rates to be effective on and after January 1, 1976, which rates are to be established pursuant to paragraph 5. Coordinated use will be provided for users of part-time interexchange channels in the manner now provided for occasional service as described in AT&T Tariff F.C.C. 260, para. 3.2.7.(B)(4)(a).

2. The aforementioned revised part-time rates for the interim period reflect rates which were recommended and proposed by the Common Carrier Bureau. The parties and the Common Carrier Bureau therefore agree that such revised tariff filing need not be accompanied by supporting data specified in Part 61 of the Commission's Rules other than as already submitted, and any applicable requirements of Part 61 for supporting data shall be waived by the Commission.

3. The aforementioned interim period, from the effective date of the revised part-time rates through December 31, 1975, shall be considered as a trial or experimental period. Data will be accumulated during this trial period concerning the market effects of the revised per hour part-time rates and the new 10-hour and 1-hour recurring part-time rates. The Commission shall obtain from AT&T relevant market, revenue and cost data and information to the extent available with respect to the foregoing, as well as data concerning full-time facilities, in a form and manner proposed by AT&T and approved by the Common Carrier Bureau.

4. All accounting order requirements imposed on AT&T related to television tariffs effective October 2, 1969 and July 1, 1973, both as to full-time (monthly) and part-time (occasional) rates, will be terminated and released, with no provision for accounting or refunds, and no accounting order or provision for refunds will be imposed with respect to the interim rates provided hereunder.

5. AT&T shall publish and file tariff revisions on not less than 30 days' notice (without any requirement for special permission by the Commission, any such requirements then applicable being hereby waived), that will bear an effective date of October 1, 1975 and in which AT&T shall set forth the part-time IXC rates it proposes to charge on and after October 1, 1975. Such tariff filing shall be supported by such cost and other data as are required by the Rules of the Commission in effect at that time. Such rates shall be subject to suspension or other action by the Commission as provided by law.

6. The stipulation and agreements herein are entered into for the sole purpose of settling and terminating the proceedings in this docket and such stipulation and agreements may not be used for any other purpose in any other context, and although the parties, in reliance upon all of the foregoing, agree to the settlement and disposition of the proceedings herein without further hearing or resolution of the specific questions in issue, all parties preserve their positions on the merits of such questions as set forth by them in their written statements, briefs and oral arguments, or otherwise.

7. This stipulation shall become effective and binding only upon approval thereof by the Commission; provided, however, that notwithstanding the foregoing paragraphs 1–6, AT&T may file revisions to the rates provided herein effective prior to October 1, 1975 if any of the following shall occur:

(a) If AT&T should be required to apply for a certificate under Section 214 of the Communications Act to implement its cost reduction program and such a certificate, in the form applied for, is not issued by the Commission within three months after filing of an application therefor. However, the parties agree that the question of the need for applying for a Section 214 certificate need not be addressed during the interim period covered by this stipulation.

(b) If the Commission or any court issues an order relative to F.C.C. Dockets 18128–18684 or 19129, or relative to any other proceedings, which holds in effect that revenues from the television transmission services are less than the revenues which should be obtained from such services, or which orders AT&T to revise its television transmission rates or regulations, tariff revisions may then be filed to increase revenues to offset the deficiency or effect the ordered changes. In such event, however, any such tariff filing would be fully subject to all Commission processes and would be subject to the rights of affected parties to oppose or support any such change.

Signed this 27th day of November, 1973

American Telephone & Telegraph Co., and Bell System Companies; American Broadcasting Co.'s, Inc., Columbia Broadcasting System, Inc., National Broadcasting Co., Inc.; Hughes Sports Network, Inc.; The Commissioner of Baseball; American Group Management Corp. (formerly State Mutual Broadcasting Corp.); Association of Independent Television Stations; The National Hockey League; TV's, Inc.; The Detroit Tiger Television Network; UPITN Corp.; Corporation for Public Broadcasting; Public Broadcasting Service; European Broadcasting Union; and Common Carrier Bureau.

F.C.C. 73–1350

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
BANGOR BROADCASTING CORP. (WGUY) BANGOR, MAINE
Has: 1250 kHz, 5 kW, ND, Day
Requests: 1250 kHz, 5 kW, DA–N, U
For Construction Permit

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released December 28, 1973)

BY THE COMMISSION:

1. The Commission has before it for consideration the application of Bangor Broadcasting Corporation (WGUY) and a petition entitled "Request for Grant and, if Necessary, Waiver of Sections 73.37(e) and 73.24(j) of Commission's Rules."

2. WGUY proposes to change the transmitter site of its present daytime operation and to add nighttime operation at the new site. The engineering studies submitted with the application indicate that the daytime portion of the application complies with our rules. With regard to the proposed nighttime operation, WGUY suggests a novel interpretation of subparts (ii) and (iii) of section 73.37(e)(2) of our rules which require that an application for nighttime facilities by an existing daytime station must show that at least 25 percent of the area or population which would receive interference-free primary service at night from the proposal 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* that no FM channel is available for use in the proposed city of designation and at least 20 percent of the area or population of that community receives less than two nighttime aural services. In the event that we disagree with WGUY's interpretation of these subparts, WGUY requests a waiver of the rule. In addition, WGUY requests a waiver of section 73.24(j) of our rules which requires that the proposed nighttime interference-free contour encompass all of the residential areas of the city of designation.

3. We find that WGUY's interpretation of section 73.37(e)(2) is invalid. Moreover, since we also conclude that the reasons advanced in support of the request for waiver of section 73.37(e)(2) are insufficient, we will deny the request for waiver and return the application as unacceptable for filing. The request for waiver of section 73.24(j) will then become moot.

4. There are presently three stations in Bangor [1] which are author-

[1] The city of Bangor has a population of 33,168 according to the 1970 census.

ized to operate unlimited time: WABI(AM), WLBZ(AM) and WBGW(FM). In addition, there are two competing applicants (one of which is Bangor Broadcasting Corporation) seeking authorization for the last vacant FM channel assigned to Bangor. (See Dockets 19165 and 19166.) A grant of either one of these proposals would result in the authorization of a fourth unlimited-time facility for Bangor. WGUY admits, impliedly if not directly, that if all authorized unlimited-time stations operate during all nighttime hours its application would be prohibited by section 73.37(e)(2). WGUY claims, however, that although they are authorized to operate 24 hours per day, WABI, WLBZ, and WBGW do not broadcast between midnight and 5:45 a.m. Therefore, WGUY argues, there is no actual radio service to Bangor and the surrounding area during these hours. WGUY proposes to operate 24 hours per day. Accordingly, WGUY contends that its proposed operation complies with the letter and the spirit of section 73.37(e)(2) by providing what would be the first actual radio service to the Bangor area between midnight and 5:45 a.m. Assuming, *arguendo*, that WGUY is correct in asserting that the three Bangor stations do not presently operate during these hours, we nonetheless find WGUY's interpretation of section 73.37(e)(2) unacceptable. WGUY misinterprets the word "service" as used in section 73.37(e)(2). The term "service" means the authority to broadcast. The degree to which that authority is actually used is inconsequential from an allocation standpoint, since unlimited-time stations are not required to operate 24 hours per day. See sections 73.71 and 73.261 of our rules. In fact, such stations are not required to operate at all between midnight and 6 a.m., local time. However, unlimited-time stations may increase their actual broadcasting hours at any time without notice to, or additional authorization from, the Commission. Since WABI, WLBZ and WBGW are authorized to operate unlimited time and may decide at any time to operate 24 hours per day, these stations must be considered as providing nighttime service for the purposes of section 73.37(e)(2).[2] Since the nighttime service areas of the authorized Bangor stations encompass the nighttime service area of the proposed WGUY operation, it is apparent that the WGUY application fails to comply with the provisions of section 73.37(e)(2)(ii) or (iii).

5. In support of its request for waiver, WGUY advances the same argument that it used in contending that the proposed operation complies with section 73.37(e)(2): the Bangor stations do not broadcast from midnight to 5:45 a.m., and the proposed WGUY operation would broadcast 24 hours per day. WGUY has submitted data regarding economic growth in the Bangor area and a petition signed by approximately 150 people for the purpose of supporting its claim that the Bangor area needs radio service 24 hours a day. WGUY also argues that its proposed nighttime operation would not preclude possible future assignments on WGUY's frequency because the main lobe of the proposed nighttime directional pattern is aimed towards the Atlantic

[2] Similarly, all authorized nighttime stations, whether or not they are actually broadcasting 24 hours per day, must be considered under section 73.182(o) of our rules in determining WGUY's proposed nighttime limitation contour which defines the nighttime service area of the proposed operation.

Ocean. (Bangor is located between the proposed site and the Atlantic Ocean.)

6. The WGUY request for nighttime operation and the accompanying request for waiver of our rules are based on the contention that if unlimited-time stations are authorized to a community but do not broadcast during certain hours, then we should authorize additional stations to fill the time gap. Obviously, however, the remaining limited standard broadcast spectrum could not accommodate such a policy.[3] Moreover, allocating stations in this manner would result in extremely inefficient utilization of the broadcast band. If the lack of service in Bangor during the early morning hours is a substantial problem, we feel confident that the existing unlimited-time stations will be responsive to that need. Accordingly, any need for additional nighttime service in Bangor can be satisfied by the existing unlimited-time stations without violating the basic provisions of our nighttime allocaton rules.

7. We have fully considered the comments submitted in support of the petition, but we find that the circumstances presented are not sufficient to warrant favorable consideration of the request. Since the applicant has failed to set forth sufficient reasons, if true, to justify waiver, there is no need to conduct a hearing and the application will be returned. *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956).

8. Accordingly, IT IS ORDERED, that the "Request for Grant and, if Necessary, Waiver of Sections 73.37(e) and 73.24(j) of the Commission's Rules" filed by Bangor Broadcasting Corporation for a waiver of section 73.37(e)(2) IS DENIED, and that the application IS HEREBY RETURNED as unacceptable for filing.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[3] While WGUY contends that its proposed operation would not preclude future assignments, it is a fact that each new nighttime operation (on any frequency) results in a radiated signal which contributes to the overall interference level and degradation of the channel.

F.C.C. 73-1326

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of BELO BROADCASTING CORP. (WFAA-TV), DALLAS, TEX. For Renewal of Broadcast License	Docket No. 19744 File No. BRCT-33
WADECO, INC., DALLAS, TEX. For Construction Permit for New Television Broadcast Station	Docket No. 19745 File No. BPCT-4453

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released December 26, 1973)

BY THE COMMISSION:

1. The commission has before it for consideration an Order of Certification in Docket No. 19744, issued by Administrative Law Judge Conlin on August 6, 1973, FCC 73M-912, a memorandum regarding the certified question, filed August 20, 1973 by Belo Broadcasting Corporation (WFAA-TV), comments on WFAA-TV's memorandum filed August 24, 1973 by the Broadcast Bureau, a letter regarding the certified question, filed September 6, 1973 by WADECO, Inc. (WADECO) a reply filed September 10, 1973 by WFAA-TV, and comments filed September 11, 1973, by the Chief, Broadcast Bureau.[1]

2. On July 1, 1971, WADECO filed with the Commission an application for a construction permit for a television broadcast station mutually exclusive with an application for renewal of a license filed by WFAA-TV. WADECO was incorporated on June 23, 1971. Its application for construction permit shows that on that date there were six persons who were directors and shareholders of the corporation: James H. Wade, Charles E. Lattimore, Jr., Dan Eubanks, James A. Justice, Jack L. Burrell and Richard L. Dockery. Wade, Lattimore and Eubanks were respectively President, Vice President and Secretary-Treasurer, owning 64.8% of the then issued and outstanding stock of WADECO. The remaining issued and outstanding stock was shown to be owned by the other three shareholders-directors. Since the filing of its application WADECO has tendered 23 amendments thereto, 16 of which dealt with the transfer of its stock. The last amendment affecting ownership was tendered on November 1, 1972. On May 23, 1973, the WADECO and WFAA-TV applications were designated for hearing. An amendment dated July 7, 1972, showed that the incor-

[1] We also considered the arguments presented to the Administrative Law Judge in the following pleadings: (a) a request to certify the question to the Commission, filed June 25, 1973, by WFAA-TV; (b) an opposition filed July 13, 1973, by WADECO; (c) comments, filed July 11, 1973, by the Broadcast Bureau; and (d) a reply filed July 20, 1973, by WFAA-TV.

porators' original controlling interest (64.8%) in WADECO had dropped to 31.8% and that the combined interest of the five remaining original stockholders was 43.8%. Twenty persons having no stock interest in the company on July 1, 1971 owned 56.2% of the stock. The Commission files show no public notice by WADECO of the filing of either the July 7, 1972, amendment or of an earlier March 16, 1972 amendment also dealing with stock ownership.[2] In light of the foregoing and in response to a request filed by WFAA–TV, Administrative Law Judge Conlin, in an order, FCC 73M–912, released August 6, 1973 certified to the Commission the question of "whether the application of WADECO, Inc. can be prosecuted in its present form."

3. Under the question certified, we are requested to decide if WADECO's application for a television station construction permit is barred from comparative consideration with WFAA–TV's renewal application because WADECO filed amendments to its application, of which no public notice was given as required by Sections 1.522(a), 1.572(b) and 1.580(c) of the Rules, and which effected a transfer of control in the corporate applicant after the Section 1.516(e)(1) cutoff date for the filing of applications mutually exclusive with WFAA–TV's application. In order to bar WADECO's application from comparative consideration under authority of Section 1.516(e)(1), we would be required, in effect, to treat WADECO's amended application as a new one filed on the date of the amendments. WFAA–TV argues that such a conclusion is necessary to protect the policy underlying Section 1.516(e)(1), *i.e.*, the orderly processing of renewal applications and providing renewal applicants with notice of competing applications. WFAA–TV cites no cases on point in support of its construction of Section 1.516(e)(1) but relies on our Notice of Proposal Rulemaking regarding Section 1.516(e)(1)[3] and the Report and Order adopting that Section of the Rules.[4] By way of an analogy, WFAA–TV cites Section 1.571(j)(2) governing AM applications, wherein amendments effecting a transfer of control are given a new file number. The assignment of a new file number results in the application being treated as a new one and losing its right to comparative hearing status if the time for filing applications mutually exclusive with renewal applications under Section 1.516(e)(1) has elapsed.

4. We do not agree with WFAA–TV's view of the operation of Section 1.516(e)(1). We cannot graft onto Section 1.516(e)(1), which applies to all broadcast stations, the substance of Section 1.571(j)(2) which applies only to AM broadcast applications. Such a result is not justified either by the express language of Section 1.516(e)(1) or by the considerations which the Commission addressed when this rule was adopted. Our concerns, as evidenced by the Notice of Proposed Rulemaking and the Report and Order adopting Section 1.516(e), involved the orderly processing of applications and the assurance of adequate notice of competing applications for licenses at renewal time to both the Commission and renewal applicants. We find both purposes are served if the Section 1.516(e)(1) cutoff date applies only to the

[2] Affirmative control of WADECO was transferred as of either March 16 or July 7, 1972, depending on whether all of the original stockholders or only the three incorporators are considered the group in privity having control of WADECO on July 1, 1971.
[3] Docket No. 18495, 34 Fed. Reg. 5605 (1969).
[4] 20 FCC 2d 191 (1969).

initial filing of an application. Provision is made in other sections of the rules for notifying renewal applicants of substantial changes in competing applications after they have been filed. Here, Section 1.572 (b) required WADECO to give public notice of any transfer of control affecting its application.

5. The fact that AM broadcast processing procedures, under Section 1.571, expressly provide for the assignment of new file numbers for, *inter alia*, applications amended to effect a transfer of control in the applicant under some conditions, does not mandate the identical treatment of television or FM applications which are subject to different procedures. Furthermore, it is not proper in this type of proceeding to amend the processing procedures through the interpretation of a general rule, Section 1.516(e)(1), when the rules treat transfer of control differently under more specific sections.[5] Such changes are more appropriately explored through our rulemaking procedures and should not be made on an *ad hoc* case-by-case basis. Therefore, we hold that the Section 1.516(e)(1) cutoff date does not bar WADECO's amended application from comparative consideration with WFAA–TV's renewal application.

6. With regard to WADECO's possible violations of public notice requirements [6] in connection with its transfer of control amendments, we do not consider these apparent derelictions to be of sufficient gravity to warrant the dismissal of its application. However, this conclusion should not be construed as condoning WADECO's actions or minimizing their significance. We reject WADECO's contention that the failure to give notice of a transfer of control is *de minimis*. On the contrary, the notice requirements serve important public interest reasons and compliance with them must be assured. Therefore, we are enlarging the issues in the pending comparative hearing to inquire into WADECO's alleged violations of the Commission's public notice requirements and the bearing such violations have on WADECO's absolute or comparative qualifications to be a licensee.

7. One other matter merits our attention. A letter filed September 6, 1973, by counsel for WADECO raised the argument that a transfer of control in WADECO never occurred. WADECO asserts that on July 7, 1972, Mrs. Madeleine Wade, the wife of one of the original stockholders in the applicant, owned a 10% interest in WADECO. WADECO argues that Texas is a community property state and that under the "applicable" Texas law, Mr. Wade is the "manager of the community" and that he should be attributed with control of his wife's stock. Such an attribution would raise the original stockholders' interest in WADECO on July 7, 1972 to over the 50% level, and the original stockholders would have maintained affirmative control of WADECO. We have considered the argument on its merits and find WADECO to be in error on the asserted point of law. Section 5.24(a) of the Texas Family Code, which appears to be controlling, provides that Mrs. Wade and not her husband controls the 10% interest, insofar

[5] Compare Sections 1.571(j)(2), (3)(AM), 1.572(a)(2)(b)(TV); and 1.573(b)(FM). See also Section 1.522, governing the amendment of all applications, which implicitly recognizes the different treatment of transfer of control amendments by its reference to certain amendments in AM cases under Section 1.571(j).

[6] Violations of Section 1.522(a), 1.577(b) and 1.580(c) have been alleged by WFAA–TV.

as she is listed as owner of the stock in WADCEO's application.[7] We are also troubled by the manner of WADECO's presentation. Aside from the fact that the letter form of pleading employed is not contemplated by the Commission's Rules, there is failure by WADECO to provide even a hint of the authority for its position on Texas community property law. WADECO's failure to cite any authority, statutory or case law, on an asserted but clearly incorrect point of law, which is contradictory to the applicable statute, and which is potentially of decisional importance to this proceeding, reflects either utter carelessness or an attempt to mislead the Commission. Such conduct does not approach the high standards expected of members of the Bar appearing before this Commission.

8. Accordingly, the question certified to the Commission IS ANSWERED in the affirmative, and the application of WADECO, Inc., CAN BE PROSECUTED in its present form; and

9. IT IS ORDERED, that the issues designated for hearing ARE ENLARGED to include the following issue:

> To determine whether WADECO, Inc., violated the requirements of Sections 1.522, 1.572 and 1.580 of the Rules, and if so, the effect thereof on its basic and comparative qualifications to be a Commission licensee.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[7] We note the facts that Texas community property law has recently undergone substantial changes (Articles 4619 *et seq.*, Revised Civil Statutes of Texas were repealed, and in lieu thereof, Sections 5.02 *et seq.*, Texas Family Code were adopted, effective January 1, 1970). Section 5.24(a) in pertinent part provides:

> During marriage, property is presumed to be subject to the sole management, control, and disposition of a spouse if it is held in his or her name, as shown by . . . evidence of ownership or if it is in his or her possession and is not subject to such evidence of ownership.

Thus, the present state of the law appears to be in flat contradiction with WADECO's position.

F.C.C. 73-1202

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of BINGHAM COUNTY CABLE TELEVISION CO., BLACKFOOT, IDAHO For Certificate of Compliance	CAC-1091 ID073

MEMORANDUM OPINION AND ORDER

(Adopted November 14, 1973; Released November 15, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS CONCURRING IN THE RESULT.

1. On August 25, 1973, Bingham County Cable Television Company filed an application for a certificate of compliance for a new cable television system to serve Blackfoot, Idaho (located in the Idaho Falls-Pocatello smaller television market). Bingham's application proposes carriage of the following television signals:

KID-TV (ABC/CBS, Ch. 3), Idaho Falls, Idaho.
KIFI-TV (ABC/NBC, Ch. 8), Idaho Falls, Idaho.
KBGL-TV (Educ., Ch. 10), Pocatello, Idaho.
KPTO [1] (C.P., Ch. 6), Pocatello, Idaho.
KCPX-TV (ABC, Ch. 4), Salt Lake City, Utah.
KSL-TV (CBS, Ch. 5), Salt Lake City, Utah.
KUTV (NBC, Ch. 2), Salt Lake City, Utah.
KUED (Educ., Ch. 7), Salt Lake City, Utah.
KWGN-TV (Ind., Ch. 2), Denver, Colo.
KBYU-TV (Educ., Ch. 11), Provo, Utah.

Objections to carriage of Stations KSL-TV, KUTV and KCPX-TV (all Salt Lake City, Utah) were filed by KID Broadcasting Corporation, licensee of Station KID-TV, and The Post Company, licensee of Station KIFI-TV, and Bingham has replied.

2. In its application, Bingham justifies its proposal to carry the CBS and NBC network affiliates from Salt Lake City on the ground that Stations KID-TV and KIFI-TV do not carry 85 percent of the prime-time weekly network programming between 5:00 and 10:00 p.m., and therefore do not qualify as full network stations, as defined in Section 76.5(1) of the Commission's Rules.[2] Alternatively, applicant seeks waiver of Section 76.59 of the Rules because cable systems operating in the nearby communities of Idaho Falls and Pocatello already

[1] Eastern Idaho Television Corporation, permittee of Television Broadcast Station KPTO, was granted its initial construction permit until April 18, 1973. It requested and received a grant (BMPCT-7466) to extend the completion date to February 9, 1974. KPTO has never been on the air.

[2] Section 76.5(1) of the Rules defines a "full network station" as follows:

A commercial television broadcast station that generally carries in weekly prime time hours 85 percent of the hours of programming offered by one of three major national television networks with which it has a primary affiliation (i.e., right of first refusal or first call).

carry Salt Lake City network stations. Bingham maintains that because no adverse impact on KID–TV and KIFI–TV from such carriage has been demonstrated, carriage of those Salt Lake City signals in Blackfoot, which is a much smaller community, will similarly have no adverse impact. In support of the waiver request, Bingham cites *Pueblo TV Power, Inc.*, 22 FCC 2d 734, *reconsideration denied*, 22 FCC 2d 911 (1970), in which, it is claimed, the Commission allowed importation of distant signals where a cable system in the same market, but not the same community, was already carrying them.

3. In their objections, KID and Post allege that because they are local full network stations, carriage of the NBC and CBS Salt Lake City affiliates is inconsistent with Section 76.59 of the Rules. In support of this contention, KID states that when monitored in March 1972, it carried 83.3% of CBS network prime-time weekly programming, or 21.42 minutes less than 85 percent, which should be sufficient to characterize it as a full network station under the definition in Section 76.5(1) of the Rules. Similarly, Post has offered specific data to show that between February 19 and March 10, 1972, KIFI–TV carried, in its 6–11 p.m. prime time period, over 22¼ hours per week or more than 85% of the 25 hours of NBC network prime-time programming offered weekly.

4. According to Bingham's monitoring of KID–TV's programming, it carried 82% of the CBS network prime-time programming; however, KID points out that this is only 43 minutes per week less than 85%. KID–TV further argues that if and when KPTO goes on the air as an ABC full network affiliate, it will carry only CBS programming. If necessary, KID even offers to reduce the amount of ABC network programming presently carried and expand the amount of CBS network programming, to assure its characterization as a full network station. And Bingham maintains that KIFI–TV likewise carries less than 85% of NBC network prime-time programming.

5. We find the arguments of all three parties confusing and certainly contradictory. Different computations based on different prime-time periods make comparison of the various claims most difficult. Rather than attempt to resolve this matter based only on the information at hand, it seems more appropriate to defer action on Bingham's proposal for the carriage of the NBC and CBS Salt Lake City affiliates pending our own analysis and further information supplied by the parties.

6. With respect to Bingham's alternative position that it should be permitted to carry the Salt Lake City affiliates because other systems in the same market already do so, we disagree. Section 76.65 of the Rules permits carriage by a proposed cable system of the same signals as are already carried by systems located in the same community, not the same market. Bingham's reliance on *Pueblo*, *supra*, is misplaced. That case involved an exhaustive economic study, which covered both communities in the Colorado Spring-Pueblo, Colorado market. The *Pueblo* decision was based only on the peculiar facts of that case and is not of general applicability.

7. Bingham's proposal to carry the signal of KCPX–TV, the Salt Lake City ABC affiliate, appears to be consistent with our Rules. Its system in Blackfoot is clearly entitled to carry three full network sta-

tions, and none are available in the Idaho Falls-Pocatello market. Both KID and Post argue that activation of KPTO will provide a market ABC affiliate and therefore carriage of KCPX–TV should not be permitted. We note, however, that the construction permit for KPTO, already extended once, is now 25 months old and, pursuant to Section 76.59(b) of the Rules, that permittee need not be considered operational.[3] We also note that KPTO although served, has not filed an objection to this matter. Additionally, Post claims that carriage of KCPX–TV would result in audience fragmentation and thus adversely affect KIFI–TV. This argument must be rejected. Post has made no appropriate showing nor do available facts support its contention. Para. 112, *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 186–187; *Fort Smith TV Cable Company*, FCC 73–151, 39 FCC 2d 573.

8. Bingham claims that its franchise granted for the City of Blackfoot, Idaho, on November 17, 1970, is in substantial compliance with the franchise standards of Section 76.31 of the Commission's Rules as follows: (1) the franchise was awarded by the Mayor and the City Council after full and complete consideration of the competing applications during a series of City Council meetings held over a 6-month period. The meetings were well publicized in the press and through public notices; (2) the franchise allows the cable operator three years to construct, erect and install the system; (3) the initial franchise period is 10 years; (4) the franchising authority has incorporated by reference the rates proposed by the applicant; (5) the franchise requires the cable operator to maintain an office in Blackfoot, open during all usual business hours. That office must have a listed telephone and must be operated so that complaints and requests for repairs or adjustments may be received at any time; (6) the franchise mandates that the cable operator shall at all times during the term of this franchise be subject to all laws, ordinances, and regulations duly adopted by any federal, state, or municipal agency having lawful jurisdiction over the business conducted by the operator; (7) the franchise fee is 3 percent or $600 per year, whichever is greater. We find that Bingham's Blackfoot franchise substantially complies with Section 76.31 of the Rules. Therefore, pursuant to Paragraph 115 of the *Reconsideration of the Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, a grant of a certificate of compliance until March 31, 1977, is appropriate. See *Sapulpa Cable Television*, FCC 72–1106, 38 FCC 2d 584, *reconsideration granted*, FCC 73–279, 40 FCC 2d 94; *Tele-PrompTer Florida CATV Corporation*, FCC 73–744, 41 FCC 2d 943.

In view of the foregoing, the Commission finds that a partial grant of the application for Blackfoot, Idaho, would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Issuance of Certificate of Compliance" filed October 30, 1972, by KID Broadcasting Corporation and the "Objection of The Post Company to Ap-

[3] Nevertheless, since certification is being requested for KPTO, it will be carried by Bingham if it goes on the air. In addition, KPTO would be entitled to network program exclusivity, pursuant to Sections 76.91 and 76.93 of the Rules.

plication for Certificate of Compliance" filed October 30, 1972, by The Post Company ARE DENIED to the extent reflected herein.

IT IS FURTHER ORDERED, That Bingham County Cable Television Company's application (CAC–1091) IS GRANTED to the extent reflected herein and is otherwise deferred, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

44 F.C.C. 2d

104-021—74——2

F.C.C. 73-1338

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 91 AND 93 OF THE COMMISSION'S RULES TO REALLOCATE CERTAIN TERTIARY FREQUENCIES FOR SHARED USE BETWEEN THE BUSINESS AND RAILROAD RADIO SERVICES	RM-2107

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released December 27, 1973)

BY THE COMMISSION:

1. Merrill T. See, Kalamazoo, Michigan, has filed a petition for amendment of Parts 91 and 93 of the Commission's Rules to permit persons eligible in the Business Radio Service to share tertiary frequencies in the 160 MHz band presently allocated in the Railroad Radio Service.[1]

2. The petitioner states that the Business Radio Service 150–160 MHz frequencies are heavily congested in his area and that the shared use of these "tertiary" frequencies would provide a measure of relief to small Business Radio users. Mr. See recognizes that substantial number of 450–470 MHz frequencies are available to business licensees but argues that small business owners are less able to take advantage of these frequencies due to the higher costs of 450 MHz equipment.

3. The basic rules for the assignment and use of the "tertiary" frequencies in the 150–160 MHz band were adopted in Docket 17703, (30 FCC 2d 209). In the proceeding the Commission concluded that operation on these frequencies is possible only if there is adequate coordination to insure sufficient geographic separation between radio systems to avoid serious interference problems. Interservice coordination is required for tertiary frequencies shared by different radio services. However, although the Railroad Radio Service frequencies in the 150–160 MHz band are coordinated, there is no such requirement in the Business Radio Service, and, therefore, there is no established mechanism for the interservice coordination that would be necessary under the petitioner's proposal.

4. Moreover, although in most of the private land mobile radio services, the "tertiary" frequencies have been available for regular use for only a few years, in the Railroad Radio Service frequency assignment with 15 kHz separation have been permitted on a regular basis since 1959 (Docket 11992). The railroad nationwide frequency assignment plan for the 160 MHz band makes no distinction between the so-called

[1] The petitioner refers to approximately one half of the frequencies in the 160.215–161.565 MHz listed in § 93.352 of the Commission's Rules.

"tertiaries" and other 15 kHz frequencies, at least in most of the country.[2] Accordingly, the frequencies sought by petitioner are used by the railroads extensively and any possible interservice sharing should be provided for under a carefully planned program. The petitioner has not suggested any such program.

5. Finally, as petitioner recognizes, frequencies are available to the Business community in petitioner's area in the 450–470 MHz band. Although somewhat more expensive equipment and more complicated systems are required for operation in the 450–470 MHz band, these frequencies are used extensively throughout the country and provided excellent communication capability. Many small businessmen needing radio communications have been able to reduce the cost of radio systems on these frequencies by sharing the use of mobile relay stations and other portions of their communication systems.

6. For the foregoing reasons the Commission does not believe the petitioner has supported his request adequately. Accordingly, the Commission concludes that it is not in the public interest to grant the subject petition.

7. It is ORDERED, Therefore, that the petition of Merrill T. See (RM–2107) is DENIED. It is further ORDERED That this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[2] This is in areas below Line A, near the Canadian border. Above Line A, U.S. Railroads employ the tertiaries only after coordination with Canadian railroad licensees because existing arrangements provide for Canadian primary use of those frequencies. Nevertheless, many tertiaries are used by U.S. railroads above Line A and a number of them are assigned in Michigan, the area of particular interest to petitioner. For a description of Line A, See Section 1.955(e) of the Commission's Rules.

F.C.C. 73-1340

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CABLECOM-GENERAL OF TOPEKA, TOPEKA, KANS. For Certificate of Compliance	CAC-1392 KS079

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released January 4, 1974)

BY THE COMMISSION: COMMISSIONER H. REX LEE DISSENTING; COMMISSIONERS REID, WILEY, AND HOOKS CONCURRING IN THE RESULT.

1. On October 17, 1972, Cablecom-General of Topeka filed an application (CAC-1392) for certificate of compliance for a new cable television system to serve Topeka, Kansas (a smaller television market).[1] The application proposes carriage of the following television signals:

KTWU (Educ., Channel 11), Topeka, Kansas.
KTSB (NBC, Channel 27), Topeka, Kansas.
WIBW-TV (CBS, Channel 13), Topeka, Kansas.
KBMA-TV (Ind., Channel 41), Kansas City, Missouri.
KCMO-TV (CBS, Channel 5), Kansas City, Missouri.
KMBC-TV (ABC, Channel 9), Kansas City, Missouri.
WDAF-TV (NBC, Channel 4), Kansas City, Missouri.
KCPT (Educ., Channel 19), Kansas City, Missouri.
KQTV (ABC/CBS, Channel 2), St. Joseph, Missouri.

This application is opposed by Washburn University, licensee of Television Broadcast Station KTWU, and Studio Broadcasting System Division of Highwood Service, Inc., licensee of Television Broadcast Station KTSB, and Cablecom has replied. On April 3, 1973, Cablecom filed an amendment to its application, and KTWU has replied.

2. In its original application, Cablecom sought authority to carry Television Broadcast Station KCPT as a distant educational signal, pursuant to Section 76.59(c) of the Rules. Washburn University objected, alleging that carriage of a competing educational signal in its primary market area could result in fragmentation of its audience with a resulting diminished capability to continue to provide quality educational television service. Subsequently, Cablecom determined that the Commission had authorized KCPT to operate under increased power and that presently KCPT's predicted Grade B contour penetrates Topeka. Accordingly, Cablecom amended its application to request authority to carry KCPT as a "must-carry" signal, pursuant to Section 76.59(a)(2) of the Rules. In its reply, Washburn argues that the increase in power granted KCPT was to an effective radiated

[1] Topeka has a population of 125,011 persons.

power substantially less than that relied upon in computing KCPT's new predicted contour map, and that KCPT has not requested carriage on the Cablecom system. Studio Broadcasting argues that Cablecom's franchise, granted July 5, 1972, for twenty years, is not consistent with the franchise standards set forth in Section 76.31 of the Commission's Rules.

3. On February 28, 1973, the Commission granted KCPT a license covering its outstanding construction permit to increase its power. According to KCPT's predicted contours, as shown in BPET–427, the predicted Grade B contour penetrates Topeka, Kansas. While it is true that under Washburn's calculations, KCPT's predicted Grade B contour does not penetrate Topeka, it appears that Washburn has considered KCPT's power in the horizontal plane whereas Section 73.684(c)(1) of the Rules provides for measuring the power directed at the radio horizon. Using this standard, KCPT's effective radiated power in the major lobe yields a predicted Grade B contour which cuts through Topeka. Request for carriage by KCPT is unnecessary; Section 76.59(a)(2) of the Rules permits carriage of educational stations which place a predicted Grade B contour over the community of the cable system, in whole or in part, without the need for a specific request. To the extent that the programming of KTWU is simultaneously duplicated by KCPT, the network program exclusivity rules should provide KTWU with adequate protection against alleged audience fragmentation.

4. With respect to its franchise, Cablecom has stated that it will voluntarily accept a 15-year certificate of compliance and will seek renewal of its franchise by that time. In the alternative, it argues that the Commission should grant the certificate for the full 20-year term. Cablecom points out that its franchise became effective before the Commission's amendment to Section 76.31(a)(3), which limited initial franchise terms to 15 years,[2] that both it and the franchising authority acted in good faith in their attempt to conform to our previous criteria of "reasonable" franchise duration, and that the franchise was granted pursuant to the only legal standards then applicable.

5. We do not dispute the good faith of either Cablecom or the City Council of Topeka. The franchise does evidence the intention of both parties to conform to applicable Commission policies and, in all other respects, strictly complies with Section 76.31 of the Rules. For us to grant the requested certificate for 20 years, however, we must first determine whether the 20-year franchise term was, in fact, consistent with Section 76.31(a)(3), before that Section was amended to limit franchise terms to 15 years.[3] To do so, we must decide whether, in the langauge of former Section 76.31(a)(3), the franchise term was "reasonable." Cablecom apparently would have us assume that for a

[2] The franchise was granted on July 5, 1972. Our amendment of Section 76.31(a)(3) of the Rules was adopted on June 16, 1972, released on June 26, 1972, and became effective on July 14, 1972.

[3] We are not unmindful of the fact that in our Public Notice of September 14, 1972 (FCC 72–825), the amendment to Section 76.31(a)(3) of the Rules, among others, was made retroactive to March 31, 1972. There are cases, however, where that strict application of retroactivity would be unfair.

community of Topeka's size, a 20-year term is reasonable.[4] Unfortunately, there has been no showing to support such a contention and, in fact, our assumption has been that ". . . in most cases, a franchise should not exceed 15 years . . ." (*Cable Television Report and Order*, para. 182). It is certainly possible that in a similar case we might find a 20-year franchise term consistent with our policies, but we cannot make this judgment in the absence of supportive evidence. We do take note of Cablecom's alternative offer to seek renewal of its franchise in 15 years. While the effect of such a unilateral decision is less than certain, we recognize Cablecom's good faith in this matter and feel that in this case the offer is sufficient to satisfy our concern.

In view of the foregoing, the Commission finds that a grant of the above-captioned application for a term of 15 years would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objections to Application for Certification" filed January 3, 1973, by Studio Broadcasting System Division of Highwood Service, Inc., ARE DENIED.

IT IS FURTHER ORDERED, That the objection filed November 14, 1972, and April 16, 1973, by Washburn University ARE DENIED.

IT IS FURTHER ORDERED, That Cablecom-General of Topeka's "Application for Certification" (CAC–1392) IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

[4] Many have argued such a term should be permitted. We note, for instance, the recommendation of the FCC Cable Television Advisory Committee on Federal-State/Local Regulatory Relationship in its final report to the Commission, submitted on September 21, 1973, that ". . . the maximum franchise period be redefined as a range of fifteen to twenty-five years, with that range to be determined by individual franchising authorities."

F.C.C. 73-1304

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CABLEVISION OF AUGUSTA, INC., AUGUSTA AND RICHMOND COUNTY, GA. For Certificates of Compliance	CAC-818 (GA003) (GA116)

MEMORANDUM OPINION AND ORDER

(Adopted December 12, 1973; Released December 28, 1973)

BY THE COMMISSION: COMMISSIONER HOOKS CONCURRING IN THE RESULT.

1. Cablevision of Augusta, Inc., operates 20-channel cable television systems at Augusta and contiguous portions of Richmond County, Georgia, located in a smaller television market.[1] Pursuant to Sections 76.11(a) and 76.13(b) of the Commission's Rules, Cablevision seeks certification for carriage of Station WSB-TV (NBC, Channel 2) Atlanta, Georgia, and deletion of Station WIS-TV (NBC, Channel 10) Columbia, South Carolina. Cablevision currently offers the following television signals on its cable systems:[2]

WJBF (ABC/NBC, Channel 6), Augusta, Georgia.
WRDW-TV (CBS/NBC, Channel 12), Augusta, Georgia.
WIS-TV (NBC, Channel 10), Columbia, South Carolina.
WTCG (Ind., Channel 17), Atlanta, Georgia.
WEBA-TV (Educ., Channel 14), Allendale, South Carolina.
WCES-TV (Educ., Channel 20), Wrens, Georgia.

Since WSB-TV is neither the nearest nor the nearest in-state NBC full network affiliate, Cablevision seeks waiver of Section 76.59(b)(1) of the Rules.

2. In support of its waiver request, Cablevision argues that: (a) the Augusta market has no primary NBC affiliate, thereby depriving Augustans of full network service; (b) the differences in distance from Augusta to the Georgia NBC affiliates WSB-TV (Atlanta, Georgia), WCNB-TV (Macon, Georgia), and WSAV-TV (Savannah, Georgia) are slight;[3] (c) WSB-TV is the most readily available Georgia NBC affiliate because of planned microwave facilities between Atlanta and Augusta to bring the signal of WTCG to Cable-

[1] Augusta has a population of 58,483, and Cablevision of Augusta, Inc., was serving 4,500 subscribers as of April 30, 1973. The cable systems commenced operations in February, 1970. Of the 20 channels that it has available for carriage of broadcast and access services, six are presently used for television signal carriage, three for automated program originations, and one for non-automated program originations.

[2] CAC-676 was granted by the Chief, Cable Television Bureau, pursuant to delegated authority, on October 12, 1972.

[3] The distances are as follows: Atlanta, 141 miles; Macon, 106 miles; and Savannah, 109 miles.

vision's system.[4] Grant of the requested waiver would allow full utilization of the microwave facilities; and (d) WSB–TV's programming is of the highest caliber generally and of particular interest to Augusta residents.[5]

3. Rust Craft Broadcasting Company, licensee of Station WRDW–TV, Augusta, Georgia, has filed "Comments on Cablevision of Augusta, Inc.'s Application for Certificate of Compliance" and a "Response to Reply." In these pleadings, Rust Craft raises four objections: (i) Cablevision's proposal is inconsistent with Section 76.59(b) of the Rules because it already carries one full NBC network affiliate, WIS–TV. Rust Craft states that any grant by the Commission should be conditioned upon deletion of WIS–TV;[6] (ii) a formal waiver request is required because WSB–TV is not the nearest in-state full network station, and the differences in distance from Augusta to Atlanta, Macon, and Savannah are not slight; (iii) Cablevision's request should not be granted until it gives its assurance that it will provide WRDW–TV with single, non-degraded channel carriage and syndicated program exclusivity; and (iv) Cablevision's arguments concerning microwave savings and Atlanta as the political and cultural center of Georgia do not constitute good cause for waiver.

4. Cablevision's application contains an implicit request for waiver of Section 76.59(b)(1) of the Rules. This request was made explicit in its reply to Rust Craft's comments and, out of an apparent abundance of caution was "formalized" in a pleading filed on October 19, 1972, to which Rust Craft did not respond. We believe that Cablevision's pleadings sufficiently meet the petition requirements of Section 76.7, even without the October 19, 1972 filing. With respect to Rust Craft's request that Cablevision be required to specify that it will provide single, non-degraded channel carriage and syndicated exclusivity, we expect that Cablevision will comply with our carriage and syndicated exclusivity requirements. The certification process does not require that cable systems affirmatively agree to comply with these rules, and we have received no evidence that Cablevision intends otherwise. E.g., *Morgan County Tele-Cable, Inc.*, FCC 73–149, 39 FCC 2d 605.

5. When the present cable television rules were adopted, special recognition was given to the value of carrying "closer" stations on the theory that, since they are usually in the same region and often in the same state, they are more likely to supply programming that is of interest in the cable community.[7] As to network affiliates, we concluded that a system ought to carry the nearest affiliate, or at its option, the nearest in-state affiliate. Section 76.59(b)(1). But, in contrast to our policy with respect to independent signals, we also said: "We will

[4] On June 11, 1972, the Commission granted Cablevision construction permits in the Cable Television Relay Service to bring WTCG to Augusta (CPCAR–441–444).

[5] According to Cablevision, the general quality of WSB–TV's programming and its desirability to Augustans are demonstrated by the awards and citations that it has received for public affairs and news presentations and by the fact that it originates from the political, social, cultural, and industrial center of Georgia. Cablevision maintains that this Georgia-oriented programming is unavailable from other Georgia stations and reinforces the close ties that exist between Augusta and Atlanta.

[6] In its reply, Cablevision explains that carriage of WSB–TV would replace carriage of WIS–TV, thereby rendering Rust Craft's first objection moot. This substitution will be reflected in Cablevision's revised certificates.

[7] Paragraph 92 of the *Cable Television Report and Order*, 36 FCC 2d 143, 179 (1972).

continue to be flexible as to the leapfrogging provisions for network signals—the rules specify that waiver may be granted for good cause, e.g., to bring in a signal of greater interest or from the same state or to avoid excessive microwave costs." [8] In the instant case, we find that Cablevision has demonstrated the necessary good cause for waiver of Section 76.59(b)(1): Cablevision has shown that WSB's programming, which originates from the state capital, is of special interest to its subscribers; WSB–TV is in-state, while WIS–TV is not, and Atlanta is not significantly farther from Augusta than are the other two in-state full NBC affiliates; and since Cablevision has already received authorization for a CARS microwave relay system between Atlanta and Augusta, WSB–TV is the most readily available Georgia NBC affiliate, and its carriage would allow full utilization of the CARS facilities and accompanying savings. Hence, we will grant the requested waiver, and deny Rust Craft's objections.

In view of the foregoing, the Commission finds that the public interest would be served by grant of the subject application and waiver request.

Accordingly, IT IS ORDERED, That the "Comments on Cablevision of Augusta, Inc.'s Application for Certificate of Compliance" and "Response to Reply" filed by Rust Craft Broadcasting Company ARE DENIED.

IT IS FURTHER ORDERED, That the application for certificates of compliance (CAC–818) IS GRANTED, and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[8] Paragraph 113 of the *Cable Television Report and Order*, 36 FCC 2d 143, 187 (1972).

F.C.C. 73-1302

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CANDO CABLE T.V., INC., CANDO, N. DAK. For Certificate of Compliance	CAC-1283 NDO14

MEMORANDUM OPINION AND ORDER

(Adopted December 12, 1973; Released December 27, 1973)

BY THE COMMISSION:

1. On September 26, 1972, Cando Cable T.V., Inc., filed an "Application for a Certificate of Compliance" (CAC-1283) in which it proposes to operate a new 12-channel cable television system at Cando, North Dakota, which is located in the Devil's Lake, North Dakota smaller television market.[1] The application was amended on January 22, 1973, to propose carriage of the following television broadcast signals:

KXJB-TV (CBS, Channel 4), Valley City, North Dakota.
WDAZ-TV (NBC, Channel 8), Devil's Lake, North Dakota.
KTHI-TV (ABC, Channel 11), Fargo, North Dakota.
KCND-TV (ABC,[2] Channel 12), Pembina, North Dakota.
CBWFT (CBC, Channel 3), Foreign Language, Winnipeg, Manitoba, Canada.

2. On January 26, 1973, Station KTHI-TV, Fargo, North Dakota, filed an objection to applicant's carriage of KCND-TV on the grounds that KCND-TV is in fact an ABC network affiliate and may not, therefore, be carried by applicant as an independent station pursuant to Section 76.59 (b) of the Commission's Rules. Station KTHI-TV is correct in its contention, and therefore, since Cando already has its full complement of network signals, carriage of KCND-TV is inconsistent with the Commission's Rules.[3]

3. Although the parties have not addressed themselves to the matter, we have examined the franchise submitted by Cando Cable. This franchise was awarded on May 1, 1972, and therefore, full compliance with the standards of Section 76.31 of the Commission's Rules is required. We find that the franchise fails to comply with those standards. The following deficiencies appear in the franchise: (1) there is no statement that the applicant's qualifications as well as the adequacy and feasibility of its construction arrangements were considered in a full public proceeding affording due process (Section 76.31(a)(1)); (2) the applicant is not required to accomplish signifi-

[1] Cando, North Dakota, has a population of 1,566.
[2] Cando listed Station KCND-TV as an independent signal.
[3] Section 76.59(b) authorizes cable television systems located in smaller television markets to carry a complement of three network stations and one independent television station.

cant construction within one year of certification (Section 76.31(a)(2)); (3) the initial franchise term of ten years coupled with a ten-year automatic renewal is inconsistent with Section 76.31(a)(3) of the Rules, since it appears in effect to award a 20-year franchise.[4] We make this determination because there is no provision for a review of the applicant's qualifications or performance until the renewal term expires. *See Leacom, Inc.*, FCC 73–292, 40 FCC 2d 129, *recons. granted*, FCC 73–412, 40 FCC 2d 693; (4) there are no complaint procedures, nor a requirement for a local business office (Section 76.31(a)(5)); (5) there is no indication that the initial subscriber rates were approved by the franchising authority or that they may be increased only by approval of the franchising authority after an appropriate public proceeding affording due process (Section 76.31(a)(4)); and (6) there is no requirement that modifications in the Commission's Rules be incorporated into the franchise within one year of their adoption (Section 76.31(a)(6)).

4. Accordingly, we will deny the present application without prejudice to the reconsideration of our action herein in connection with the submission of an amended carriage proposal and an amended franchise. *See Leacom, Inc., supra.*

In view of the foregoing, the Commission finds that a grant of the subject application would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That Cando Cable T.V., Inc.'s application for certificate of compliance (CAC–1283) IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[4] Section 76.31(a)(3) provides that "the initial franchise period shall not exceed fifteen (15) years . . ."

F.C.C. 73R-417

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of CAPROCK RADIO, INC., LUBBOCK, TEX.	Docket No. 19455 File No. BP-18482
PANHANDLE BROADCASTING, INC., PLAINVIEW, TEX.	Docket No. 19456 File No. BP-18497
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted December 20, 1973; Released December 21, 1973)

BY THE REVIEW BOARD:

1. This proceeding involves the mutually exclusive applications of Caprock Radio, Inc. (Caprock) and Panhandle Broadcasting, Inc. (Panhandle) for construction permits for new standard broadcast stations in Lubbock, Texas, and Plainview, Texas, respectively. These applications were designated for consolidated hearing under various issues by Memorandum Opinion and Order, FCC 72-197, released March 9, 1972 (together with four other mutually exclusive applications which were subsequently dismissed). On August 14, 1973, the Presiding Judge released an Initial Decision, FCC 73D-42, proposing to grant Panhandle's application. The Judge determined that both applicants met the financial issues designated against them, that only Panhandle met its designated *Suburban* issue, and that Panhandle's application should be granted, even if Caprock were not disqualified, since Panhandle's proposal is preferred under the designated Section 307(b) issue. On September 13, 1973, Caprock filed exceptions to the Initial Decision which are now pending before the Review Board. On December 4, 1973, the applicants filed a joint petition seeking approval of an agreement looking toward the reimbursement of $10,000 by Panhandle of expenses Caprock incurred in the preparation and prosecution of its application; dismissal of Caprock's application; and immediate grant of Panhandle's application.[1]

2. Caprock has itemized and adequately substantiated expenses in an amount in excess of $10,000. In addition, petitioners have supplied affidavits setting forth the exact nature of the consideration involved, the details of the initiation and history of the negotiations, and the reasons why they believe that approval of the agreement should serve the public interest, i.e., it would terminate the present proceeding and result in early institution of service to Plainview. Thus, petitioners have complied in all respects with the requirements of Section 1.525(a) of the Rules.

[1] The Broadcast Bureau filed comments on December 14, 1973, recommending approval of the agreement and grant of Panhandle's application.

3. With regard to the publication requirements of Section 1.525(b), the Board has reviewed the record in this proceeding in light of the exceptions and other pleadings and is satisfied that the Presiding Judge's analysis and conclusion in her Initial Decision that Panhandle's proposed station should be preferred under Section 307(b) of the Act, is warranted. Therefore, dismissal of Caprock's application would not unduly impede the objectives of Section 307(b) and there is no necessity to require publication under Section 1.525(b) of the Rules.

4. Accordingly, IT IS ORDERED, That the joint petition for approval of agreement, filed December 4, 1973, by Caprock Radio, Inc. and Panhandle Broadcasting, Inc. IS GRANTED; that the agreement IS APPROVED; that the exceptions, filed September 13, 1973, by Caprock Radio, Inc. ARE DISMISSED; that the application of Caprock Radio, Inc. (File No. BP–18482) IS DISMISSED; that the application of Panhandle Broadcasting, Inc. (File No. BP–18497) IS GRANTED; and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1176

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re DANVILLE CABLEVISION CO., DANVILLE, VA. Request for Special Relief	CSR-314 VA029

MEMORANDUM OPINION AND ORDER

(Adopted November 14, 1973; Released November 21, 1973)

BY THE COMMISSION:

1. On January 22, 1973, Danville Cablevision Company, operator of a cable television system at Danville, Virginia, filed a "Petition for Waiver" (CSR-314) of Sections 76.91(a) and 76.93(a) of the Commission's Rules.[1] On February 21, 1973, Multimedia, Inc., licensee of Station WXII, Winston-Salem, North Carolina, filed an "Opposition to Petition for Waiver." On March 13, 1973, Danville Cablevision filed its "Reply to Opposition to Petition for Waiver."

2. Danville, Virginia is located outside of all television markets. Danville Cablevision operates a twenty-channel cable television system and carries the following signals:

WFMY-TV (CBS), Greensboro, North Carolina.
WBRA-TV (Educ.), Roanoke, Virginia.
WUNC-TV (Educ.), Chapel Hill, North Carolina.
WRAL-TV (ABC), Durham, North Carolina.
WRDU-TV (NBC), Raleigh, North Carolina.
WDBJ-TV (CBS), Roanoke, Virginia.
WGHP-TV (ABC), High Point, North Carolina.
WSLS-TV (NBC), Roanoke, Virginia.
WTVD (CBS), Raleigh, North Carolina.
WXII (NBC), Winston-Salem, North Carolina.
WLVA-TV (ABC), Lynchburg, Virginia.
WRFT-TV (ABC), Roanoke, Virginia.
WCVE-TV (Educ.), Richmond, Virginia.
WCVW (Educ.), Richmond, Virginia.

[1] Section 76.91(a) provides in pertinent part:

Any cable television system operating in a community, in whole or in part, within the Grade B contour of any television broadcast station, or within the community of a 100-watt or higher power television translator station, and that carries the signal of such station shall, on request of the station licensee or permittee, maintain the station's exclusivity as an outlet for network programming against lower priority duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in §§ 76.93 and 76.95.

Section 76.93(a) provides in pertinent part:

Where the network programming of a television station is entitled to program exclusivity, the cable television system shall, on request of the station licensee or permittee, refrain from simultaneously duplicating any network program broadcast by such station, if the cable operator has received notification from the requesting station of the date and time of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. On request of the cable system, such notice shall be given no later than the Monday preceding the calendar week (Sunday–Saturday) during which exclusivity is sought.

WXII, Channel 12, places a predicted Grade A contour over Danville, WRDU–TV, Channel 28, places a predicted Grade B contour over Danville. Both stations are NBC affiliates.

3. Danville Cablevision requests us to waive the exclusivity provisions of Sections 76.91(a) and 76.93(a) as to its carriage of WXII. Danville Cablevision argues that it should not be required to accord exclusivity to WXII on the grounds that WRDU–TV is a comparatively new UHF station, that WXII places only a "marginal" Grade A contour over Danville, and that Danville has a greater "community of interests" with Raleigh than with Winston-Salem. We reject Danville Cablevision's arguments for the following reasons.

4. In creating priorities, Section 76.91(b) specifically talks in terms of contours within which "the community of the system is located, *in whole or in part.*" [2] Accordingly, we find the fact that a station is UHF to be irrelevant in this context; though the *Cable Television Report and Order* explicitly gave UHF stations favorable treatment in terms of carriage, it did not articulate any comparable policy in terms of exclusivity. Indeed, we noted in Paragraph 98 of the *Cable Television Report and Order* that "except for this change from same-day to simultaneous protection, we retain the precedents and policies evolved under the prior rule." And we previously had denied waivers which, like this one, were based on general assertions of harm to UHF stations. *Armstrong Utilities, Inc.*, FCC 69–551, 17 FCC 2d 938. Similarly, Danville Cablevision's attempt to demonstrate that WXII places a Grade A contour over only part of Danville is irrelevant under the language of Section 76.91(a) and is not a ground for waiver. Finally, Danville Cablevision has failed to document the existence of a "community of interests" between Danville, Virginia and Raleigh, North Carolina which would justify a waiver.

In view of the foregoing, the Commission finds that grant of the requested special relief will not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Waiver" filed January 22, 1973, by Danville Cablevision Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[2] Section 76.91(b) provides in pertinent part:

(b) For purposes of this section, the order of priority of television signals carried by a cable television system is as follows:

(1) First, all television broadcast stations within whose principal community contours the community of the system is located, in whole or in part;

(2) Second, all television broadcast stations within whose Grade A contours the community of the system is located, in whole or in part:

(3) Third, all television broadcast stations within whose Grade B contours the community of the system is located, in whole or in part;

F.C.C. 73-1332

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 1 AND 21 OF THE COMMISSION'S RULES AND REGULATIONS APPLICABLE TO THE DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)	Docket No. 19905

NOTICE OF PROPOSED RULEMAKING

(Adopted December 19, 1973; Released December 28, 1973)

BY THE COMMISSION:

1. Notice is hereby given of proposed rule making to revise procedures contained in Parts 1 and 21 of the Rules and Regulations applicable to the processing of applications in the Domestic Public Radio Services (other than Maritime Mobile). The proposed rules are intended to clarify various application requirements, streamline our procedures, and expedite the processing of applications.

2. In general, Subpart B of Part 21 of our Rules would be revised as follows:

(a) the provisions concerning the definition of major amendments, the consolidation of mutually exclusive applications (the so called "cut-off rule") and assignments of licenses would be substantially amended;

(b) new sections would be added to deal with agreements between mutually exclusive applicants, trafficking in licenses or construction permits, and to establish a summary procedure for the comparative evaluation of mutually exclusive applications without a hearing; and

(c) the provisions concerning defective applications, amendment procedures, public notice period, dismissal and return of applications, oppositions to applications, processing of applications, grants without a hearing, partial grants and conditional grants would be revised and renumbered.

3. Present §§ 21.23 and 21.24 concerning the amendment of applications and the definition of major amendments would be revised substantially. The provisions dealing with amendment procedures (present §§ 21.23(a), 21.23(b), and 21.24) would be editorially revised and renumbered with the deletion of the reference to a motion for more definite statement which has not proven useful or necessary, A new § 21.23(d) would deal with situations where a new application, rather than an amendment would be required for the relocation of a proposed station. Present § 21.23 (c) and (d), the definition of major amendments, would be combined and completely rewritten as proposed § 21.23(c).

4. The concept of a major amendment has caused some difficulty because the language of the parenthetical examples implies a standard which is virtually limited to specific technical changes. For example, the question has arisen of whether a change in the ownership of an applicant, or the substitution of one applicant for another, constitutes a major amendment.[1] In contrast to the broadcast rules, our common carrier rules do not address this problem, although we believe that such a change could be considered to be a major amendment.

5. Our new approach will be to avoid restrictive language and to more clearly equate the term "major amendment" as used in the Rules with the term "substantial amendment" as used in Section 309(b) of the Communications Act [47 USC § 309(b)]. By allowing reference to the public notice philosophy of § 309 of the Act, this equation as set forth in § 21.23(c)(5) would permit a flexible interpretation needed to meet unanticipated factual situations. We recognize that this equation may be vague as a standard and that some specific examples may be required to guide applicants. New examples are given in proposed subparagraphs (c)(1) through (c)(4). However, we stress that these examples are meant as a supplement to, and not a substitute for, the policy test of subparagraph (c)(5). Thus, while subparagraphs (c)(1) and (c)(2) give specific examples of common engineering changes which normally require public notice, these examples are not meant to anticipate all of the possible engineering changes which could be interpreted as requiring a public notice.[2] The same is true for subparagraph (c)(3), which is the last parenthetical example of the present § 21.23(c), and for subparagraph (c)(4) which deals with changes in ownership or control of the applicant in the same manner as does § 1.571(b).

6. Occasional difficulty has been experienced also with the present § 1.227(b)(3) and § 21.30(b), the consolidation or so called "cut-off rule." In Domestic Public Radio Services, this rule is important enough to warrant a separate section, and proposed § 21.30 would be a combination of, and an elaboration on, material in the present §§ 21.30(b) and 21.28(d). The proposals are self explanatory except for proposed § 21.30(b), (c), and (e). Proposed § 21.30(b) and the applicable provision of proposed § 1.227(b)(3) would state the four requirements for an application entitled to comparative consideration. These requirements are, first, that the application must be factually mutually exclusive as defined in proposed § 21.30(a). Secondly, the application must be in a condition acceptable for filing, a revised requirement which we believe is, in light of case interpretation and past policy, less ambiguous than the present requirement of "substantial completeness." The present terminology has caused some processing confusion because it has been construed as establishing different standards for defective applications such that it is possible for a mutually exclusive applica-

[1] *See, Empire Communications Co.*, 33 FCC 2d 731, 732, 23 Pike & Fischer Radio Regs. 2d 941, 943–44 (1973).

[2] Furthermore, these specific technical changes should not be interpreted as the only changes that would require prior coordination pursuant to § 21.100(d). Under § 21.100(d) any change that could conceivably have adverse impact on another user must be coordinated, whether or not such changes may be classified as major or minor. Also these major amendment examples should not be confused with the limitations on permissive changes to authorized facilities as specified in §§ 21.109 and 21.121.

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tion to be unacceptable for filing and yet be "substantially complete" enough to be entitled to comparative consideration.[3] In this regard, § 21.20 ("Defective applications") would be editorially revised to clarify the necessity of substantial compliance with the Commission's Rules. Thirdly, the application must be in an acceptable condition as of the so called "cut-off" date. The present §§ 1.227(b)(3) and 21.30 (b) imply that an application must be in acceptable condition when it is tendered.[4] The proposal would remove the ambiguity. Finally, the application must be filed as of the so called "cut-off" date. As before, this requirement in proposed § 21.30(b) would be worded in the alternative—sixty days or the day before final action is taken on the first filed application, whichever date comes first. The proposal clarifies the requirement, however, to stress that the sixty day period is no guarantee of comparative consideration to potential competitors.[5] The sixty day filing period is a conditional right because we will not delay the grant of an application beyond its statutory public notice period, if it is ready for action, in order to anticipate the possible filing of a competing application. Consequently, the only absolutely certain date for being able to file a competitive application is within thirty days after the public notice date of the first application. In addition, we propose to add § 21.30(c) to our rules to deal with the "chain reaction" situation where three or more applications are mutually exclusive, but not uniformly so.

7. Proposed § 21.30(e) would concern the effect of major amendments on mutually exclusive applications. As an exception, subparagraph (e)(1) is new, being designed to reconcile the present § 21.30(b) with the present § 21.23(b), and to end the effects of the "cut-off rule" when applications are designated for hearing or comparative evaluation.[6] Subparagraph (e)(2) would be clarification of the exception contained in the third sentence of the present § 21.30(b). As a further exception, subparagraph (e)(3) would exempt from the "cut-off rule" a major amendment which reflects the merger of competing applications so as to expedite our processing. Our purpose in proposing this latter exception is to encourage compromises between competing applicants where, of course, the compromises would serve the public interest.

8. Similar to the broadcast requirements of § 1.525(a), proposed § 21.28 (d) and (e) would be new provisions to deal with agreements between mutually exclusive applicants to withdraw one or more of the competing applications. Close review of such agreements is considered important in discouraging the filing of "strike applications" or unreasonable "buy-outs" of competitors. Consequently, we propose to dismiss an application withdrawn pursuant to an agreement and to continue processing the remaining application only if the withdrawal agreement is found to be consistent with the public interest. However, common carrier facilities, particularly point-to-point microwave systems, usually involve substantial "in-house" engineering.

[3] *James River Broadcasting Co.* v. *FCC*, 399 F. 2d 581, 583 (D.C. Cir. 1968).
[4] *Id.*
[5] *Century Broadcasting Corp.* v. *FCC*, 310 F. 2d 864 (D.C. Cir. 1962); *see, Ridge Radio Corp.* v. *FCC*, 292 F. 2d 770, 773 (D.C. Cir. 1961).
[6] *See, Empire Communications Co.*, 39 FCC 2d 143 (Rev. Bd. 1973).

Thus, unlike the broadcast rule, we propose to allow the amount of consideration promised or paid to the withdrawing applicant to include both those "out-of-pocket" and "in-house" costs which are legitimate, prudent, and directly assignable by the withdrawing applicant to the preparation, filing, and advocacy of his application. Indirect or overhead costs, which would be incurred regardless of the application, would be excluded. Where they exceed one thousand dollars, allowable direct costs would have to be verified by a certified itemized accounting.

9. Proposed § 21.32 would be a new procedure designed to allow us to consider without a hearing, routine, mutually exclusive applications where the only issue is the comparative merits of proposals submitted by applicants who are willing to agree to waive their rights to a hearing in order to avoid the expense and delay of the normal comparative procedure. Paragraph (a) would state the procedure's preconditions, the most important of which is subparagraph (a)(3). Since this procedure is based essentially upon consideration of undisputed facts submitted by the applicants, it would be inappropriate if important facts submitted were themselves in serious dispute. Paragraph (b) would be a self-explanatory outline of the procedure to be followed. After receipt of the written requests of all of the applicants, we anticipate that the staff of the Common Carrier Bureau would be delegated authority to make an initial determination of whether this procedure is appropriate, and, if so, to issue a notice stating the comparative criteria upon which the applications are to be evaluated. The final decision on the comparative merits of the competing proposals would be rendered by the Commission (rather than the staff) in a brief opinion. This decision would be considered final, and we would closely scrutinize any petitions for reconsideration for strict conformance with the requirements of Sections 1.101 through 1.120 of the Rules.

10. Two substantive changes are proposed to our procedures dealing with transfer of control or assignment of licenses. First, § 21.27(d) and (e) is intended to deal with the situation where pending applications are amended to reflect consummation of a Commission approved transfer of control or assignment. In general, we don't feel a second public notice is necessary where the transfer or assignment application indicated that pending applications of the same carrier would be affected. Therefore, we are proposing that, except for certain special circumstances noted in the text of the rules, the public notice period for the major amendment be considered to have run concurrently with the notice for the original transfer or assignment application. This is, of course, a somewhat unusual approach and we solicit comments or alternative suggestions for dealing with this procedural problem. Secondly, a new section 21.34 is proposed to deal with possible trafficking in licenses or construction permits. In recognition of the different character of common carrier operations, this section is less restrictive than the broadcast rule, and is generally focused on the transfer or assignment of facilities operated for less than two years. If the transaction involves more than two stations,

the two year period would be calculated from the median date of the stations involved.[7]

11. The provisions concerning defective applications, amendment procedure, dismissal of applications, oppositions to applications, processing of applications, grants without a hearing, partial grants and conditional grants would be revised. Of necessity, many existing provisions would be renumbered and rearranged in order to combine repetitious material and to clarify ambiguous provisions. We appreciate that a change in organization can be inconvenient at first. To facilitate the transition and to aid review we have included in attached Appendix I a table which indicates generally the derivation of our proposals. The text of the proposed provisions are contained in Appendix II, attached hereto.

12. Where these proposed rules would clarify ambiguities or uncertainties in the existing rules, they will be considered as Commission policy pending the finalization of this proceeding. Where such policy would be more restrictive than that previously applied, applications pending as of the release date of this Notice will not be acted upon in such a manner so as to cause them undue prejudice. For example, it is not clear under the present rules whether a change in ownership or control of an applicant would constitute a major amendment of the application. Our present policy, as expressed in this Notice, is that such a change is a major amendment, and applications henceforth so amended in this interim period prior to final adoption of these rules will be treated as major amendments. This policy will, of course, have to apply to previously amended pending applications. However, where such classification would cause great prejudice, e.g., dismissal, in the case of a mutually exclusive application beyond the "cut-off period," we will consider granting a special waiver to preclude an unfair result.

13. Authority for the rule amendments as proposed in the attached appendix is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended [47 USC § 154(i), 303(r)].

14. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before February 14, 1974 and reply comments on or before March 16, 1974. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

15. In accordance with the provisions of Section 1.419 of the Rules, an original and fourteen (14) copies of all comments, replies, pleadings, briefs or other documents shall be furnished to 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.

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[7] I.e., that date so selected such that fifty per cent of the commencement dates of the total number of stations, when arranged in chronological order, lie below it and fifty per cent lie above it. When the number of stations is an even number, the median date will be a value half way between the two dates closest to the theoretical median.

APPENDIX I

For informational purposes, the following is the derivation of the proposed amendments to Part I and Subpart B of Part 21 of the Commission's rules:

Proposed amendment	*Derivation*
§ 1.227(b)(3)	New—substantive revision of present § 1.227(b)(3).
§ 21.20(a)	New—editorial combination of present § 21.20(a) with part of present § 21.20(b).
§ 21.20(b)	New—editorial revision of present § 21.20(b).
§ 21.20(c)	Present § 21.20(c).
§ 21.23(a)	New—editorial revision of present § 21.23(a).
§ 21.23(b)	New—editorial revision of present § 21.23(b).
§ 21.23(c)	New—substantive revision of present § 21.23 (c) and (d).
§ 21.23(d)	New.
§ 21.23(e)	Second sentence of present § 21.23(a).
§ 21.23(f)	First sentence of present § 21.24.
§ 21.24	Deleted.
§ 21.25(c)	Deleted and placed in proposed § 21.27(a).
§ 21.27(a)	New—editorial revision of present § 21.26(c).
§ 21.27(b)	New—editorial revision of present § 21.27(b).
§ 21.27(c)	New—editorial revision of present § 21.27(a).
§ 21.27(d)	New.
§ 21.27(e)	New.
§ 21.28(a)	New—editorial combination of present § 21.28 (a) and (c).
§ 21.28(b)	New—editorial revision of present § 21.28(b).
§ 21.28(c)	New—editorial revision of last sentence of present § 21.28(c).
§ 21.28(d)	New—substantive elaboration on last sentence of present § 21.28(b).
§ 21.28(e)	New.
§ 21.28(f)	New.
§ 21.29 (a) and (b)	New—editorial revision of present § 21.27(c).
§ 21.29(c)	New—editorial revision of present § 21.27(c) and § 21.30(c).
§ 21.29(d)	New—substantive revision of § 21.30(c).
§ 21.30 (a) and (b)	New—substantive revision of § 21.30(b).
§ 21.30(c)	New.
§ 21.30(d)	New—editorial combination of present § 21.28 (d) and § 21.30(b).
§ 21.30(e)	New—substantive revision of present § 21.30(b).
§ 21.31(a)	New—47 U.S.C. § 309(a).
§ 21.31(b)	New—editorial combination of present § 21.27 (e) and § 21.30(a).
§ 21.31(c)	New—editorial combination of present § 21.27 (f) and § 21.30(d).
§ 21.31(d)	New—editorial combination of present § 21.29.
§ 21.31(e)	New—editorial revision of present § 21.27(c).
§ 21.31(f)	New—editorial revision of present § 21.27(f).
§ 21.31(g)	New—editorial revision of present § 21.31.
§ 21.31(h)	New.
§ 21.32 (a) and (b)	New.
§ 21.33 (a), (b), and (c)	New—substantive revision of present § 21.32 to reflect 47 U.S.C. § 310(b).
§ 21.33(d)	New—editorial revision of § 1.541.
§ 21.34 (a) and (b)	New.
§ 21.35	[Reserved]
§ 21.36	Present § 21.33.
§ 21.37	Present § 21.34.
§ 21.38	Present § 21.35.

APPENDIX II

It is proposed to amend Parts 1 and 21 of Chapter I of Title 47 of the Code of Federal Regulations as follows:

1. In § 1.227 amend paragraph (b) (3) to read as follows:

§ 1.227 Consolidations.

* * * * * * *

(b) * * *

(3) In common carrier cases (except for those involving either Public Coast stations in the Maritime Mobile Service, or stations in the Domestic Public Radio Services), any application that is mutually exclusive with another previously filed application will be considered with such prior filed application only if the later filed application is received by the Commission in a condition acceptable for filing prior to the close of business on the day preceding the day the earlier filed application is either designated for hearing or granted. Consolidation of cases involving Public Coast stations in the Maritime Mobile Services is provided for in subparagraph (4) of this paragraph. In the Domestic Public Radio Services, no application will be entitled to comparative consideration with one or more conflicting applications unless such application, or such application as amended by a major amendment (as defined by § 21.23 of this chapter), meets the requirements of § 21.30 of this chapter.

* * * * * * *

2. Subpart B of the Table of Contents to Part 21 is amended to read as follows:

Part 21

CONTENTS

Sec.
§ 21.36 Period of construction.
§ 21.37 Forfeiture of station authorizations.
§ 21.38 License period.

3. § 21.20 is amended to read as follows:

§ 21.20 Defective Applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the ommissions, if:

(1) the application is defective with respect to completeness of answers to questions, execution, or other matters of a formal character; or

(2) the application does not substantially comply with the Commission's rules, regulations, or other requirements.

(b) Applications considered defective pursuant to paragraph (a) of this section may be accepted for filing if:

(1) the application is accompanied by a request which sets forth the reasons in support of a waiver of, or an exception to, any rule, regulation, or requirement with which the application is in conflict; or

(2) the Commission, upon its own motion, waives or allows an exception to, any rule, regulation or requirement.

(c) If an applicant is requested by the Commission to file any documents or information not specifically required in the prescribed application form, a failure to comply with such request will constitute a defect in the application.

4. § 21.23 is amended to read as follows:

§ 21.23 Amendment of applications.

(a) Any pending application may be amended as a matter of right if the application has not been designated either for hearing, or for comparative evaluation pursuant to § 21.32 of this chapter.

(b) The Commission will grant requests to amend an application designated for hearing or comparative evaluation only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) The Commission will classify amendments on a case by case basis. An amendment will be deemed to be a major amendment subject to the provisions of § 21.27 and § 21.30 under any of the following circumstances:

(1) in the Point-to-Point Microwave Radio Service, Local Television Transmission Service, and the Multipoint Distribution Service, the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to): (i) a change in, or an addition of, a radio frequency; (ii) a change in polarization of the transmitted signal; (iii) an increase in transmitter output power of 3db or more; (iv) a change in transmitter emission where such change increases the bandwidth by more than ten (10) percent; (v) a change in the geographic coordinates of a station's transmitting antenna of more than ten (10) seconds of latitude or longitude; (vi) any technical change of a Multipoint Distribution Service station's transmitting antenna which would significantly extend its service area; and (vii) a change of greater than two (2) degrees in azimuth of the center of main lobe of radiation of a point to point station's transmitting antenna.

(2) in the Domestic Public Land Mobile Radio Service and Rural Radio Service, the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to): (i) a change in, or addition of, a radio frequency; (ii) an increase in the number of locations on the same frequency; (iii) an increase in effective radiated power which would significantly enlarge the service contour; (iv) a change in the geographic coordinates, type, or positioning of a transmitting antenna which would significantly enlarge the service contour; (v) a change in the class of stations; (vi) a significant change in the location or number of points of communication of an existing or proposed station; (vii) a change which would improve the operating characteristics of an existing or proposed station; (viii) a change in the type of emission of a transmitter; and (ix) a change in geographical coordinates of more than one (1) second of latitude or longitude.

(3) the amendment results in a material alteration of the nature of an existing or proposed service;

(4) the amendment specifies a substantial change in beneficial ownership or control (*dejure* or *defacto*) which, in the case of an authorized station, and would require the filing of a transfer or assignment application pursuant to § 21.33 of this chapter;

(5) the amendment is determined by the Commission otherwise to be substantial pursuant to section 309 of the Communications Act of 1934 [47 USC § 309].

(d) In the Point-to-Point Microwave Radio Service and Local Television Transmission Service, a pending application may be amended, and a new application will not be required, for the relocation of a proposed station site if:

(1) the geographic coordinates of the new station site are within twenty (20) miles of the coordinates of the original site; and

(2) the relocated station would serve essentially the same purpose in the system as originally proposed.

(e) If a petition to deny (or for other relief) has been filed, or if the Commission has published a notice that the application appears to be mutually exclusive with another application (or applications), any amendment (or other written communications) shall be served on the petitioner and on any such mutually exclusive applicant (or applicants), unless waiver of this requirement is granted pursuant to § 0.291(k) of this chapter.

(f) Any amendment to an application shall be signed, and submitted in the same manner, and with the same number of copies, as was the original application; *Provided, however,* that amendments may be made in letter form, complying in all other respects with this paragraph.

5. § 21.24 is deleted and marked [Reserved].

6. § 21.26(c) is deleted.

7. § 21.27 is amended to read as follows:

§ 21.27 Public notice period.

(a) At regular intervals, the Commission will issue public notices listing: (1) all applications and major amendments thereto which have been accepted for filing; and (2) those applications upon which final action has been taken.

(b) The Commission will not grant any application until thirty (30) days after the issuance of a public notice listing the application or any major amendment thereto as acceptable for filing.

(c) As an exception to paragraphs (a) and (b), the public notice provisions are not applicable to applications for:

(1) authorization of a minor change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 21.23 of this chapter) were such a change to be submitted as an amendment;

(2) consent to an involuntary assignment or transfer of control of a radio authorization under section 310(b) of the Communications Act [47 USC § 310(b)];

(3) consent to a voluntary assignment or transfer of control of a radio authorization under Section 310(b) of the Communications Act [47 USC § 310(b)], where the assignment or transfer does not involve a substantial change in ownership or control;

(4) issuance of a license subsequent to a construction permit or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(5) extension of time to complete construction of authorized facilities;

(6) temporary authorization pursuant to § 21.25(b) of this chapter;

(7) authorization of facilities for remote pickup, temporary studio links and similar facilities which serve a broadcast station;

(8) an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 [47 USC § 308(a)].

(d) Whenever an application is amended by a major amendment to reflect a substantial change in ownership resulting from an assignment of construction permit or license, or a transfer of control of a corporate permittee

or licensee, the public notice period for the major amendment shall be considered to run concurrently with the public notice period for the assignment or transfer application if it is indicated in such application that the assignment or transfer transaction contemplates the transfer of rights in pending applications of the same carrier.

(e) As an exception to paragraph (d) of this section, a supplementary public notice (and thirty day period associated therewith) will apply to a major amendment reflecting a substantial change in ownership resulting from an assignment of construction permit or license, or a transfer of control of a corporate permittee or licensee, if:

(1) the application to be amended is in mutually exclusive status with one or more other applications and the amendment is acceptable within the time limits provided by § 21.30 of this chapter; or

(2) any person advises the Commission in writing prior to final action on the transfer or assignment application that: (i) he intends to oppose the pending application for new or modified facilities on the basis of the change in ownership, but for reasons which are not relevant to the assignment or transfer application; or (ii) he intends to file an application which would be mutually exclusive with a specified pending application when it is amended to reflect the substantial change in ownership.

8. § 21.28 is amended to read as follows:

§ 21.28 Dismissal and return of applications.

(a) Subject to the provisions of paragraphs (d) and (e) of this section, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal either prior to designation for hearing, or prior to selection of the comparative evaluation procedure of § 21.32 of this chapter. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice.

(b) A request to dismiss an application without prejudice will be considered either after designation for hearing, or after selection of the comparative evaluation procedure of § 21.32 of this chapter, only if:

(1) a written petition is submitted to the Commission and is properly served upon all parties of record; and

(2) the petition is submitted before the issuance of a public notice of Commission action denying the application; and

(3) the petition demonstrates good cause and complies with the provisions of paragraphs (d) and (e) of this section (whenever applicable).

(c) Subject to the provisions of paragraphs (d) and (e) of this section, an application will be dismissed without prejudice if an applicant fails to respond to official correspondence or requests for additional information.

(d) Whenever applicants for mutually exclusive instruments of authorization entitled to comparative consideration (See § 21.30 of this chapter) enter into an agreement or understanding to settle the conflict between their proposals by the withdrawal of one or more applications, the Commission will dismiss such application (or applications) and continue processing the remaining application (or applications) pursuant to paragraph (e) of this section, only if:

(1) Within five (5) days after entering into the agreement or understanding all the parties thereto file a joint request for approval of the agreement and for dismissal of the application (or applications); and

(2) the joint request is accompanied by both a complete copy of the agreement or understanding and the affidavit of each principal thereto disclosing in full all relevant facts, including (but not limited to): (i) the exact nature of any consideration promised or paid, including an agreement for merger of interests or the reciprocal withdrawal of applications; (ii) a complete explanation of, and justification for, any consideration promised or paid; (iii) the reasons why pursuant to the agreement or understanding the withdrawal of the application (or applications) is considered to be in the public interest; and (iv) any additional or supplementary information (submitted in the form of an affidavit) which the Commission in its judgment thinks is necessary for a determination pursuant to paragraph (e) of this section.

(e) In accordance with the procedure outlined in paragraph (d) of this section, the Commission will dismiss an application (or applications) only if it finds upon examination of the information sumitted, and upon consideration of such other matters as it may officially notice, that:

(1) the amount of any monetary consideration and the cash value of any other consideration promised or paid to the withdrawing applicant is not in excess of those legitimate and prudent costs (excluding indirect or overhead expenses) directly assignable by the withdrawing applicant to the preparation, filing, and advocacy of his application as verified by a certified itemized accounting and such factual information as the withdrawing applicant submits; and

(2) the agreement or understanding for the withdrawal of the application (or applications) does not reflect adversely upon the qualifications of the remaining applicant (or applicants) to be a licensee, and is consistent with the public interest, convenience, and necessity.

The treatment to be accorded with withdrawal payments for interstate rate making purposes will be determined at such time as the question may arise in a rate proceeding.

(f) As partial exceptions to paragraph (e)(1) of this section:

(1) an itemized accounting is not required if the parties certify in the joint request for dismissal that the amount of any monetary consideration and the cash value of any other consideration promised or paid to the withdrawing applicant does not exceed one thousand dollars ($1,000.00) and that such consideration is otherwise in accordance with the provisions of paragraph (e);

(2) subject to § 21.34 of this chapter, the amount of allowable consideration may include a sale of facilities or a merger of interests if: (i) complete details are disclosed as to the sale of facilities or merger of interests; and (ii) the amount of consideration promised or paid for the withdrawal of an application is clearly and justifiably segregated from the sale of facilities or merger of interests.

9. § 21.29 is amended to read as follows:

§ 21.29 Opposition to applications.

(a) Except as otherwise provided, petitions to deny (or a petition for other forms of relief) and responsive pleadings for Commission consideration must:

(1) identify the application or applications (including Commission file numbers and radio service involved) with which it is concerned;

(2) be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§ 1.41 through 1.52 of this chapter; and

(3) contain (except for facts of which official notice may be taken) specific allegations of fact, supported by the affidavit of a person or persons with personal knowledge thereof, whenever the pleading alleges or denies matters of fact.

(b) The Commission will officially notice and respond to a Petition to Deny (or petition for other forms of relief) if:

(1) the application is one to which the thirty (30) day public notice period of § 21.27(b) of this chapter applies; and

(2) the petition is filed within thirty (30) days (*see* § 1.4 of this chapter) after the issuance of a public notice of the acceptance for filing of any such application or major amendment thereto; and

(3) the petition conforms with the requirements of paragraph (a) of this section; and

(4) the petition is served by the petitioner upon the applicant no later than the date of filing thereof with the Commission; and

(5) the petition contains specific allegations of fact sufficient to show that the petitioner is a party in interest, and that a grant of the application would be *prima facie* inconsistent with the provisions of § 21.31 of this chapter.

(c) The Commission will classify as informal objections:

(1) any petition to deny (or a petition for other forms of relief) not filed within the time periods specified by paragraph (b) of this section

where the Commission for good cause shown does not waive the foregoing time limitations; or

(2) any comments on, or objections to the grant of an application (other than the issuance of a license pursuant to a construction permit) where the comments or objections do not conform to the requirements of either paragraph (a) of this section or other Commission rules and requirements.

(d) The Commission will consider informal objections (but will not necessarily discuss them specifically in a formal opinion pursuant to § 21.31(c) of this chapter) if:

(1) the informal objection is filed at least one day before Commission action on the application; and

(2) the informal objection is signed by the submitting person (or his representative) and discloses his interest.

10. § 21.30 is amended to read as follows:

§ 21.30 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude as a practical matter the grant of one or more of the other applications.

(b) An application will be entitled to comparative consideration with one or more conflicting applications only if:

(1) the application is mutually exclusive with the other applications; and

(2) the application is received by the Commission in a condition acceptable for filing no later than whichever date is earlier: (i) sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or (ii) one (1) business day preceding the day on which the Commission takes action on the previously filed application (or applications), should the Commission act upon such application (or applications) in the interval between thirty (30) and sixty (60) days after the date of its public notice.

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application establishes the date prescribed in paragraph (b)(2) of this section, regardless of whether the other conflicting applications are directly mutually exclusive with the first filed application. *For example*, applications A, B, and C are filed in that order. A and B are directly mutually exclusive, and B and C are directly mutually exclusive. In order to be considered comparatively with B, C must be filed within the "cut-off" period established by A even though C is not directly mutually exclusive with A.

(d) An application otherwise mutually exclusive with one or more previously filed applications, but filed after the appropriate date prescribed in paragraph (b)(2) of this section, will be returned without prejudice and will be eligible for refiling only after final action is taken by the Commission with respect to the previously filed application (or applications).

(e) For the purposes of this section, a mutually exclusive application will be considered to be a newly filed application if it is amended by a major amendment (as defined by § 21.23 of this chapter), except under the following circumstances:

(1) the application has been designated for comparative hearing, or for comparative evaluation (pursuant to § 21.32 of this chapter), and the Commission accepts the amendment; or

(2) the amendment resolves frequency conflicts with authorized stations or other pending applications, but does not create new or increased frequency conflicts; or

(3) the amendment reflects only a change in ownership which results from an agreement whereby two or more applicants entitled to comparative consideration of their applications join in one or more existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration and such agreement is found by the Commission not to be contrary to the public interest.

11. § 21.31 is amended to read as follows:

§ 21.31 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity.

(b) The grant shall be without a hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) the application is complete and in accordance with the Commission's requirements; and

(2) the application is not subject to comparative consideration (pursuant to § 21.30 of this chapter) with another application (or applications), or, if the application is subject to comparative consideration with another application (or applications), the applicants have chosen the comparative evaluation procedure of § 21.32 of this chapter and a grant is appropriate under that procedure; and

(3) a grant of the application would not cause harmful interference to an existing station, or to stations for which a construction permit is outstanding; and

(4) there are no substantial and material questions of fact presented; and

(5) the applicant is legally, technically, financially and otherwise qualified, and a grant of the application would be consistent with the requirements of paragraph (a) of this section.

(c) If the Commission grants without a hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 21.29(b) of this chapter, the Commission will deny the petition by the issuance of a concise statement which will report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for hearing) in response to a petition for reconsideration which:

(1) is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial grant; and

(2) rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) returns the instrument of authorization.

(e) The Commission will designate an application for hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) there are substantial and material questions of fact presented; or

(2) the application is entitled to comparative consideration (pursuant to § 21.30 of this chapter) with another application (or applications); or

(3) the application is entitled to comparative consideration (pursuant to § 21.30 of this chapter) and the applicants have chosen the comparative evaluation procedure of § 21.32 of this chapter, but the Commission deems such procedure to be inappropriate.

(f) The Commission may grant, deny, or take other appropriate action with respect to an application designated for hearing pursuant to paragraph (e) of this section after a hearing conducted in accordance with the provisions of Part 1 of this chapter.

(g) Whenever the public interest would be served thereby the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either designate all of the mutually exclusive applications for hearing or (whenever so requested) follow the comparative evaluation procedure of § 21.32 of this chapter, if it appears:

(1) that some or all of the applications were not filed in good faith, but were filed for the purpose of delaying or hindering the grant of another application; or

(2) that the public interest requires the prompt establishment of radio service in a particular community or area; or

(3) that a delay in making a grant to any applicant until after the conclusion of a hearing on all applications might jeopardize the rights of the United States under the provisions of an international agreement to the use of the frequency in question; or

(4) that a grant of one application would be in the public interest in that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, or other statutes, or of the provisions of this chapter.

(h) Reconsideration and/or review of any final action taken by the Commission will be in accordance with §§ 1.101 through 1.120 of this chapter.

12. A new § 21.32 is added to read as follows:

§ 21.32 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications, applicants may request the Commission to consider their applications without a hearing in accordance with the summary procedure outlined in paragraph (b) of this section, if:

(1) the applications are entitled to comparative consideration pursuant to § 21.30 of this chapter; and

(2) the applications have not been designated for hearing; and

(3) the Commission determines, initially or at any time during the procedure outlined in paragraph (b) of this section, that such procedure is appropriate, and that, from the information submitted and consideration of such other matters as may be officially noticed, there are no substantial and material questions of fact presented (other than those relating to the comparative merits of the applications) which would preclude a grant pursuant to paragraphs (a) and (b) of § 21.31 of this chapter.

(b) Provided that the conditions of paragraph (a) of this section are satisfied, applicants may request the Commission to act upon their mutually exclusive applications without a hearing pursuant to the summary procedure outlined below:

(1) To initiate the procedure, each applicant will submit to the Commission a written statement containing: (i) a declaration that he fully and knowledgeably understands both his hearing rights and the summary nature of this procedure; (ii) a waiver, express and unconditional, of his right to a comparative hearing; (iii) a request and agreement that, in order to avoid the delay and expense of a comparative hearing, the Commission should exercise its judgment to select from amongst the mutually exclusive applications that proposal (or proposals) which would best serve the public interest; and (iv) the notarized signature of each principal (and his attorney if so represented).

(2) After receipt of the written requests of all of the applicants the Commission (if it deems this procedure appropriate) will issue a notice designating the comparative criteria upon which the applications are to be evaluated and will request each applicant to submit, within a specified period of time, additional information concerning his proposal relative to the comparative criteria.

(3) For a period of thirty (30) days following the due date for filing this information, the Commission will accept concise, factual, and non-argumentative comments on the competing proposals from the rival applicants, potential customers, and other knowledgeable parties in interest.

(4) From time to time during the course of this procedure the Commission may request additional information from the applicants and hold informal conferences at which all competing applicants shall have the right to be represented.

(5) Upon evaluation of the applications, the information submitted, and such other matters as may be officially noticed, the Commission will

issue a decision granting one (or more) of the proposals which it concludes would best serve the public interest, convenience, and necessity. The decision will report briefly and concisely the reasons for the Commission's selection and will deny the other application(s). This decision shall be considered final.

13. The present § 21.32 is renumbered § 21.33 and amended to read as follows:

§ 21.33 Transfer and assignment of station authorizations.

(a) No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. The treatment to be accorded acquisition or disposition costs for interstate rate making purposes will be determined at such time as the question may arise in a rate proceeding.

(b) Requests for transfer or assignment authority shall be submitted on the application forms prescribed by § 21.14 of this chapter; shall be accompanied by the applicable showings required by §§ 21.14, 21.15 and 21.34 of this chapter; and shall be disposed of as if the proposed transferee or assignee were making application for the permit or license in question under the provision of Subpart B, Part 21 of this chapter.

(c) In acting upon applications for transfer and assignment authority the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.

(d) The Commission shall be notified in writing promptly of the death or legal disability of an individual permittee or licensee, a member of a partnership, or a person directly or indirectly in control of a corporation which is a permittee or licensee. Within thirty (30) days after the occurrence of such death or legal disability, an application in accordance with the provisions of paragraph (b) of this section shall be filed requesting consent to involuntary assignment of such permit or license or for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved.

14. A new § 21.34 is added to read as follows:

§ 21.34 Considerations involving transfer and assignment applications.

(a) Whenever applications (except those involving a *pro forma* assignment or transfer of control) for consent to assignment of a common carrier construction permit or license, or for transfer of control of a corporate permittee or licensee, involving facilities which have been operated by the proposed assignor or transferor for less than two years, the Commission will review the transaction to determine if the circumstances indicate possible trafficking in licenses or construction permits. The Commission may require the submission of a affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to explain why the transaction does not involve trafficking. Such a showing should demonstrate that the proposed assignment or transfer is due to changed circumstances affecting the licensee or permittee subsequent to the acquisition of the permit or license, or that the proposed transfer of radio facilities is incidental to the transfer of other assets. If after review of the showing there is reasonable doubt that the transaction is free of trafficking, the Commission will designate the application(s) for hearing.

(b) For purposes of this section, the two year period is calculated using the following dates (as appropriate):

(1) the initial date of grant of the construction permit, excluding subsequent modifications;

(2) the date of consummation of an assignment or transfer, if the station is acquired as the result of an assignment of construction permit or license, or transfer of control of a corporate permittee or licensee; and/or

(3) the median date of the applicable commencement dates (determined pursuant to subparagraphs (1) and (2) of this paragraph) if the transaction involves two or more stations.

15. The present § 21.35, "License period," is renumbered § 21.38, and § 21.35 is marked [Reserved].

16. The present § 21.33, "Period of construction," is renumbered as § 21.36.

17. The present § 21.34, "Forfeiture of station authorizations," is renumbered as § 21.37.

F.C.C. 73-1283

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REVISION OF SUBPART G, PART 73 OF THE COMMISSION'S RULES PROVIDING FOR THE EMERGENCY BROADCAST SYSTEM (EBS)

ORDER

(Adopted December 6, 1973; Released December 7, 1973)

BY THE COMMISSION:

1. Section 73.911, Subpart G, Part 73, in addition to other provisions, provides for the EBS Authenticator List (Red Envelope) and the Authenticator Word List EBS (Voice) (White Envelope) to be issued on a quarterly basis. It has been concluded that issuance of these documents on a semi-annual basis will prove as effective as the current distribution time frame. In addition, this change will prove cost effective in that approximately 17,000 mailings will be saved on an annual basis. Changes required to the Rules and Regulations are as indicated below:

a. Section 73.911(a). The last sentence of the subparagraph is amended to read; "The EBS Authenticator List (Red Envelope) issued semi-annually by the Federal Communications Commission is utilized in these procedures."

b. Section 73.911(b). The last sentence of the subparagraph is amended to read; "The EBS Authenticator List (Red Envelope) issued semi-annually by the Federal Communications Commission and associated with the EBS Checklist is utilized in these procedures."

c. Section 73.911(c). The last sentence of the subparagraph is amended to read; "Authenticator Word Lists EBS (Voice) series (White Envelope) issued semi-annually by the Federal Communications Commission are utilized in these procedures."

2. It is ordered that effective January 1, 1974, Subpart G, Part 73 of the Commission's Rules and Regulations is amended as shown in the attached appendix.

3. Authority for these amendments is set out in Section 1, 4(i) and (o), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), and 303(r). Because these amendments are procedural in nature, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

§ 73.911(a), (b), and (c) are revised to read as follows:

§ 73.911 Standard Operating Procedures (SOP's) and Authenticator Word Lists.

* * * * * * *

(a) EBS SOP–1 Series contains detailed operational and authentication procedures for the First and Second Methods National-Level interconnecting facilities of the Emergency Action Notification System and is promulgated by the Federal Communications Commission and issued to specified non-government control points of the nationwide commercial Radio and Television Broadcast Networks (ABC, CBS, IMN, MBS, NBC, UPI–Audio, ABC–TV, CBS–TV, NBC–TV) the American Telephone and Telegraph Co., the Associated Press (AP), and United Press International (UPI). The EBS Authenticator List (Red Envelope) issued *semi-annually* by the Federal Communications Commission is utilized in these procedures.

(b) EBS SOP–2 Series. The EBS SOP–2 Series contains detailed operational and authentication procedures for the First and Second Methods of the Emergency Action Notification System and is promulgated by the Federal Communications Commission and issued to all standard, FM, and television broadcast stations subscribing to the AP and UPI Radio Wire Teletype Networks and to network affiliates. The EBS Authenticator List (Red Envelope) *issued semi-annually* by the Federal Communications Commission and associated with the EBS Checklist is utilized in these procedures.

(c) EBS SOP–3 Series. The EBS SOP–3 Series contains detailed operational and authentication procedures providing a backup for the First and Second Methods National-Level interconnecting facilities of the Emergency Action Notification System and is promulgated by the Federal Communications Commission and issued to specify non-government control points of the nationwide commercial Radio and Television Broadcast Networks, the American Telephone and Telegraph Co., Associated Press (AP), and United Press International (UPI). Authenticator Word Lists EBS (Voice) series (White Envelope) issued *semi-annually* by the Federal Communications Commission are utilized in these procedures.

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F.C.C. 73-1363

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 81, 83, 87, 89, 91, 93, AND 97 OF THE COMMISSION'S RULES TO PROVIDE A COMMON EMERGENCY FREQUENCY FOR USE BY SINGLE SIDEBAND HIGH FREQUENCY STATIONS LICENSED UNDER THESE PARTS IN THE STATE OF ALASKA; AMENDMENT OF PART 2 TO PROVIDE FOR SUCH OPERATIONS IN THE TABLE OF FREQUENCY ALLOCATIONS.	Docket No. 19909 RM 2164

NOTICE OF PROPOSED RULEMAKING

(Adopted December 27, 1973; Released January 4, 1974)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. Notice of Proposed Rule Making is hereby given in the above entitled matter.

2. The State of Alaska, Department of Public Works, Division of Communications, has petitioned the Commission to amend Parts 81, 83, 87, 89, 91, 93 and 95 so as to provide for the use of the frequency 4383.8 kHz (carrier frequency) as a common emergency frequency by stations licensed for single sideband operation in these services in the State of Alaska. The petition further requested that the frequency 4383.8 kHz be deleted from sections 81.307 and 81.304(a) which list frequencies available for radiotelephony use by public coast stations. In response to a request for a clarification, the Commission has been advised informally that the petitioner specifically desires the following:

> 1. Delete the frequency 4383.8 kHz in sections 81.307 and 81.304(a) for *normal use* by public coast stations *in Alaska only*, and
>
> 2. Permit the *emergency use* of the frequency 4383.8 kHz by all Alaska stations licensed under Parts 81 (including public coast stations), 83, 87, 89, 91, 93 and 95.

The petitioner was of the opinion that regular use of the frequency by public coast stations in Alaska would preclude its effective emergency use, as proposed.

3. The petition presented a justification for a common emergency frequency which may be summarized as follows:

> a. There are within the great land mass of Alaska many remote villages and camps which are totally dependent upon radio as the sole means of communication. The increased activity during recent years in these remote areas has emphasized the urgent lack of adequate communication in the state outside of a few major centers

of population. With the exception of one or two radio schedules per working day, many construction camps, field crews and even sizeable villages have no contact whatsoever with the outside world. After office hours or on Sundays and holidays, it is virtually impossible for the residents of these remote areas to summon medical aid, call for emergency transportation, or even talk with a medical officer for suggestions in treating emergencies.

b. There are many radio stations in Alaska licensed to individuals, companies and governmental agencies, but communication among them is difficult because of the lack of a frequency common to all. In the event of an emergency, the operator will make an effort to obtain assistance by making a general call, however, he has no assurance that anyone will be monitoring the particular frequency he is using for transmission. A common frequency similar to the distress, safety and calling frequencies in the maritime services would eliminate this problem. A common frequency for the protection of life and property is justified in Alaska due to the vast distances and hazardous terrain.

c. The State of Alaska intends to ensure effective participation by State radio stations and anticipates similar participation by a large number of other stations on a voluntary basis.

4. The petition requests that the following radio services be permitted to participate in emergency operations on the common frequency:

Part 81—Stations on Land in the Maritime Services and Alaska Public Fixed Stations
Part 83—Stations on Shipboard in the Maritime Services
Part 87—Aviation Services
Part 89—Public Safety Radio Services
Part 91—Industrial Radio Services
Part 93—Land Transportation Radio Services
Part 95—Citizens Radio Service.

This would provide for participation by a large variety and number of state and local government stations, as well as private stations, licensed under these parts of our rules. In addition, the petition envisages further participation by federal government stations also sharing the frequency, a subject which will be discussed later in detail.

5. In support of the petition, letters from the following were included with the petition:

Col. M. E. Dankworth, Director
Division of State Troopers
State of Alaska

Commissioner E. W. Chapple, Jr.
Department of Public Safety
State of Alaska

Sgt. John G. Reed
Juneau, Alaska Police Department
(Representing all Juneau Search and Rescue Agencies)

Robert J. Bacolas
Chief of Police and Director of Civil Defense
Juneau, Alaska

Department of Transportation
United States Coast Guard
Commander 17th Coast Guard District
APO Seattle, Washington

Donald Lowell, Director
Department of Military Affairs
Alaska Disaster Office,
State of Alaska
Anchorage, Alaska

Col. Calvin C. Warren, USAF
Assistant Chief of Staff, J6
Headquarters, Alaskan Command
APO Seattle, Washington

John F. Lee, M.D.
Medical Director
Director, Alaska Area Native Health Service
Department of H.E.W.
Anchorage, Alaska

Louis A. Ciotti
Deputy Director for Management Operations
Office of the Secretary
United States Department of the Interior
Washington, D.C.

6. The petition requests the emergency use of the frequency 4383.8 kHz, by stations in the radio services designated in paragraph 2 above, for single sideband operation (emission 2.8A3J) with 150 watts peak envelope power (PEP) on a 24 hour basis throughout the State of Alaska. The petitioner states that of the thousands of high frequency (HF) transmitters licensed in Alaska, practically all are licensed for that power—which is needed to cover the great distances between some of the stations. Further, the petitioner expresses the belief that such common emergency use of 4383.8 kHz on land is as adequately justified as the maritime use of the frequency 2182 kHz, which has been available for years as a distress and calling frequency.

7. The Commission finds sufficient merit in the Alaska petition to warrant the issuance of this Notice of Proposed Rule Making. However, we are cognizant of the need for much care in the development of proposed rules. Any emergency radiocommunication system must function well and reliably if it is to serve the public interest. Therefore, as indicated in the following paragraphs, much careful consideration has been given with the view toward avoiding or minimizing the potential faults in such a system and to make clear its possible limitations, based on information now available. It is probable that the limited capabilities of the proposed system would leave many emergency requirements unsatisfied. However, it could bring about some improvement in the emergency use of the sparse radio facilities which presently exist in many areas of Alaska. As a general observa-

tion, it appears that the use of relatively inexpensive VHF fixed networks covering large portions of Alaska would offer the most practical near-future solution to the problem of poor communications in the more remote areas. The use of microwave relay links for higher traffic density circuits will no doubt expand and the use of communication satellites will probably greatly assist in interconnecting larger towns and cities in the not too distant future and in supplementing terrestrial circuits. However, there are indications that the use of even the most austere earth stations in villages and smaller towns may not prove practical within perhaps the next decade because of the lack of adequate funds and electric power.

8. Because frequencies below 25 MHz are shared by Government and non-Government radio services, the petition was placed on the agenda of the Interdepartment Radio Advisory Committee (IRAC) for comments. The IRAC membership consists of representatives of those agencies of the Federal Government which are major users of the radio spectrum. Among other matters, it considers non-Government proposals having an impact on existing operations in bands shared by Government and non-Government radio services. Its recommendations are used by the Office of Telecommunications Policy (OTP) in the formulation of Executive Branch policies on telecommunication matters. The petition was placed on the IRAC agenda for its comments, on the basis that if the frequency were found to be acceptable, the assignments would be made on a non-interference basis and subject to accepting all interference from stations operating in accordance with the Table of Frequency Allocations. It was also pointed out that Appendix 25 of the ITU Radio Regulations allotted the use of the proposed frequency by France and 17 of its former territories (none near Alaska) and not by the United States. However, the frequency is now widely used in the U.S. area by the U.S. Coast Guard and also, in Alaska, by non-Government Public Coast and Ship stations. The above stipulation regarding interference referred to any international interference which might develop. If serious interference of this nature did occur, the emergency system would have to be changed to a different frequency or be abandoned. Both Coast Guard and the FCC have monitored the proposed frequency to attempt to identify and evaluate any potential interference problems and found none. Existing U.S. operations have not caused any known interference to those of other countries and their registration for 24 hour operation has received favorable findings by the International Frequency Registration Board of the International Telecommunication Union (ITU). The frequency 4383.8 kHz is authorized for use by Public Coast Stations in Alaska. However, its use is limited to 6 AM to 9 PM L.S.T. There are now around 1000 such authorizations which permit the use of 4383.8 kHz, as one of a family of frequencies. Under the proposal, the power would be limited to 150 watts (Peak Envelope Power), which would minimize the possibility of causing harmful interference in very distant areas. At the same time, such power should provide usable signals up to a distance of perhaps 50 miles during the day and 500 miles at night, although such distances would be subject to wide variations. Although general concern was expressed by the IRAC over the feasibility of using the frequency effectively for emergency

communication in Alaska, the IRAC approved the initiation of rule making by the FCC and indicated that some Federal Government stations would wish to participate in the emergency network and that Federal agencies would cooperate toward making the frequency useful. However, they intend to continue their use of their own assignments on a day-to-day basis. It was indicated that the Coast Guard might establish other coast stations on this frequency in Alaska to improve the coverage of the network.

9. Careful consideration has been given to the question of which non-Government services should be permitted to use the frequency under the proposed plan and it has been concluded that such use should be primarily limited, at least initially, to those services now permitted under our existing rules to operate in the high frequency (HF) region of the spectrum with single sideband equipment which meets our required technical standards. Stations in other services, namely, Parts 93 and 95, would have to purchase additional equipment in order to operate on the proposed common emergency frequency. This equipment would become unusable by these licensees if the proposed system did not prove workable. High frequency single sideband equipment capable of meeting the rather stringent technical standards in rules listed above currently sells for around $500.00 or more. Also, it is believed that the question of whether the system proves workable would depend largely upon the degree of cooperation and discipline on the part of all of the participants, both Government and non-Government. Because of the past history of operating rule violations in the Citizens Radio Service, their inclusion could jeopardize the success of the emergency network. However, Citizen Radio licensees would continue to have the capability of using their existing equipment to provide very useful local communication during emergency conditions. Because of the proficiency of the Amateur Radio Service in effectively employing their high frequency equipment to provide valuable emergency communications over the years, it is proposed to permit this Service to participate in the use of the common emergency frequency in Alaska. Amateurs would be permitted to operate on this frequency subject to the existing general technical requirements now in the rules governing that Service. This could permit the use of much existing equipment used by Amateurs with minimal or no modifications. Comments are specifically invited concerning the extent and nature of the modifications which would be required for compatible operation in the emergency network. Comments are also requested on the question of whether higher powered Amateur stations should be required to reduce power to 150 watts (P.E.P.) when operating on the frequency during test transmissions or actual emergency conditions. The State of Alaska representatives have informally urged that the Land Transportation Radio Services not be excluded, although the present rules, Part 93, do not now provide for high frequency operation. Accordingly, that service is being included in this proposal, with the understanding that the high frequency, single sideband technical standards now in Part 89 or Part 91 would be made applicable to such equipment authorized under Part 93 if this part of our proposal is later adopted. Transmitting equipment used for this purpose by Part

93 licensees would be required to be type accepted under Part 89 or Part 91.

10. As pointed out previously, the petition requested that the frequency 4383.8 kHz be deleted from Part 81 of our Rules as being available for normal use by non-Government public coast stations, presumably in Alaska, only. The petitioner has informally expressed the belief that the existing normal use of the frequency by such stations would preclude its effective emergency use. On the other hand, however, if normal use of the frequency is very light, as indicated by FCC and Coast Guard monitoring, its emergency use would not be hampered. In fact, it might increase the possibility that an emergency call would be heard. It is noted that Federal Agency use of the frequency for their normal operations is expected to continue in the event non-Government emergency use of the frequency is adopted as a result of this proceeding. This type of normal, active use would assist in keeping the frequency free of interference from other stations when needed for emergency use, at which time it would be expected that normal operations, both Government and non-Government, would temporarily cease. Accordingly, comments are invited on the question of whether normal non-Government public coast station use of the frequency should be limited or precluded.

11. Although the State of Alaska has proposed the use of a common frequency for emergency communication, the petition does not define the term "emergency communication" or describe the types of communication which should be permitted or excluded on the frequency. Generally, the term is considered to include communication directly related to the safety of life and property. However, it is believed that a more specific definition may be necessary and comments on this matter are being requested. In addition, long experience has shown that the effective shared use of radio by a number of stations on one frequency for a common purpose, generally referred to as a "network", requires some degree of operational control in order to avoid chaotic radio interference and to ensure the efficient flow of traffic, recognizing that priorities are normally required during emergency conditions. In usual practice, a group of stations comprising a radio network covering a given area has one station designated as a "net control station" which determines, among other things, the order in which the member stations may transmit traffic. The matter of control could present serious problems in this instance, especially because of the many different entities which would participate in the use of the frequency. It appears that this matter requires further attention, at least in the more populated areas where a sizable number of stations could have emergency traffic at the same time. Also, specific plans for the further relaying of such traffic to its proper destination would be essential. Accordingly, comments on the problems raised in this paragraph will be considered particularly important. It is noted that the Alaska petition states that if the proposed common emergency frequency is established, it would undertake immediate steps to ensure twenty-four hour monitoring of such frequency at State stations, including those operated by the State Troopers, and would seek to expand this coverage through the assistance of "other Alaska stations". The petitioner anticipates that the frequency would be monitored by a large number of

stations on a voluntary basis. In addition to monitoring, specific provisions would be required for the periodic testing of participating stations in order to ensure the reliability of equipment and circuits. This could well be a subject for further study as operational experience is gained.

12. There is some question concerning whether the use of the single frequency would provide effective communication over the distances required on a sufficiently reliable basis. Radio propagation conditions in the high frequency region of the spectrum are subject to wide variations which change with time. Day and night conditions are very different and there are seasonal and yearly variations, also, due to many factors such as sun spot activity. Radio propagation variations in the more northern latitudes are known to be very severe. Therefore, it must be recognized that there would be instances where a participating station will be unable to communicate with another, even one quite near. Under other radio propagation conditions, the frequency could prove very usable. The petition contained little information on this subject and comments are invited concerning the effect of high frequency radio propagation characteristics in the Alaska region on the proposed emergency use of the frequency.

13. State of Alaska representatives have informally asked that the Commission immediately make the requested frequency available for operational use, subject to the outcome of this proceeding. However, the Commission believes that such action would be inappropriate at this time for the following reasons:

(a) There is no current major emergency situation in Alaska which would justify a waiver of the rules to permit immediate activation of the frequency for emergency communications.

(b) Comments are needed to determine the types of emergency traffic which could reasonably be permitted on the frequency.

(c) The potential impact on existing public coast station use of the frequency cannot be accurately evaluated on the basis of information now available.

(d) The IRAC has approved only the initiation of a rule making proceeding and expressed general concern over the feasibility of the system, as presented.

(e) No procedure for providing effective control over the use of the frequency has been proposed.

(f) There is no similar precedent for the establishment of an emergency network of this type involving a wide variety of radio services.

However, the Commission will accept applications for operations on 4383.8 kHz in the Experimental Radio Services (Other than Broadcast) under Part 5 of our rules for the purpose of conducting operational tests and obtaining additional technical data relevant to the type of emergency operations proposed herein.

Further, as outlined herein, there is a need for additional information essential to the development of any specific rule amendments which may be adopted for the various radio services involved. The Appendix hereto proposes a specific rule amendment to Part 2 providing for a new footnote US212 to the Table of Frequency Allocations. In recognition of the emergency nature of the Alaska petition,

the Commission intends to expedite action in this proceeding to the extent practicable.

14. The proposed amendments to the rules are issued pursuant to the authority contained in Sections 4(i) and 303 (c), (h) and (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 February 4, 1974, and reply comments on or before February 22, 1974. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission will also take into account other relevant information before it, in addition to the 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 filed shall be furnished the Commission. Responses will be available for public inspection during business hours in the Commission's Public Reference Room in its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

A. Part 2 of Chapter 1 of title 47 of the Code of Federal Regulations is amended by adding a new footnote US212 in Section 2.106 as follows:

§ 2.106 Table of Frequency Allocations.

Federal Communications Commission						
Band (kHz)	Service	Class of station	Frequency (kHz)	Nature of services		
7	8	9	10	11		
•	•	•	•	•	•	•
[1] 4361–4438	Maritime Mobile	Coast		Coast (telephony).		
•	•	•	•	•	•	•

[1] US212. The use of 4383.8 kHz may be authorized to stations in the amateur, fixed and mobile services in the State of Alaska for emergency communications.

F.C.C. 73-1348

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
ROBERT S. EDELMAN, EVANSVILLE-VANDERBURGH SCHOOL CORP., EVANSVILLE, IND.
Concerning Conditional Grant of Renewal Application of Station WNIN-TV Subject to Assignment of License

DECEMBER 19, 1973.

MR. ROBERT S. EDELMAN,
Evansville-Vanderburgh School Corp.,
9201 Petersburg Road.
Evansville, Ind. 47711

DEAR MR. EDELMAN: This is in reference to the application to assign the license of Station WNIN-TV, Evansville, Indiana, from Evansville-Vanderburgh School Corporation to Southwest Indiana Public Television, Inc. (BALET-13) and the application to renew the license of Station WNIN-TV (BRET-199).

The Commission, on December 19, 1973, granted the above-mentioned applications. However, in view of the Equal Employment Opportunity inquiry of the Commission's Broadcast Bureau with respect to the license renewal application of WNIN-TV and response to it by Evansville-Vanderburgh School Corporation, the renewal application was granted subject to the condition that the assignment must be consummated within 45 days of the date of grant of these applications and the Commission must be notified of consummation within 1 day thereafter. Failure to meet this condition will render the grant null and void and the renewal application will revert to pending status.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1359

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice to
THE EVENING NEWS ASSOCIATION, STATION WWJ-TV, DETROIT, MICH.
Of Apparent Liability for Forfeiture for Violations of Section 73.670(a)(2)(ii) of Commission Rules

DECEMBER 19, 1973.

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

THE EVENING NEWS ASSOCIATION,
Station WWJ-TV,
622 Lafayette Blvd.,
Detroit, Mich. 48231

GENTLEMEN: This letter constitutes a Notice of Apparent Liability for forfeiture pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended.

On February 27, 1973 you were sent an inquiry regarding alleged broadcasts of a program totally commercial in nature on Sundays from 10:00 a.m. until noon featuring homes and land for sale. In response to this inquiry in a letter of March 14, 1973 you stated that Station WWJ-TV had broadcast a program titled "The House Detective"; that the program was video taped in WWJ-TV studios by station personnel under the supervision of WWJ-TV management; that the program was devoted to a presentation of available housing in the area; that the broadcasts of the program began on June 4, 1961 as a weekly one-hour Sunday program from 11:00 a.m. to 12:00 noon; that beginning January 7, 1968 the program time was expanded to two hours—10:00 a.m. to 12:00 noon; and that, except for occasional preemptions, this format was continued until February 18, 1973 when the program was terminated. You further stated that each participating sponsor in the program was noted in the program logs and that the program clearly identified its sponsors. You explained (referring specifically to the daily station log of February 18, 1973) that "The House Detective" was classified in the log as "other"; that during the two-hour program, total commercial time was listed as 30 minutes; that this time accounted for "strictly commercial copy" used in "identifying the sponsor, furnishing information as to location, hours of availability, and similar information designed to specifically aid and encourage the viewer to visit the homes"; that the film tours of the advertised property were logged as program content; that this evaluation reflected the practice established in 1961 and continued to the time the program was terminated; that on the basis of the Commis-

sion's recent decisions, the station had reevaluated the program with respect to the commercial content and is now of the opinion that the logs should reflect that the entire program was commercial in nature; that in accordance with the provisions of Section 73.670(d)(1), the station logs were corrected to show the entire program period as commercial; and that because this classification was not in "compliance with the commercial standards of the station" the program was terminated.

You maintain that the purpose of the program was to provide viewers with information concerning houses for sale and rent, real estate developments and housing industry service; that the program was in the public interest in that it furnished viewers information as to homes and apartments for sale and rent in differing price ranges in various areas of Detroit and its suburbs; that in content and in purpose the program was similar to a special real estate section in the daily newspapers; and that the acceptance of the program by the public reflected the desires of a substantial segment of the viewing audience for this particular type of housing reference service. You conclude that "no viewer was ever misled, either by the content of the program or its purpose, and the station's decision to terminate the program of its own volition was based solely upon its determination that the program was not in compliance with the station's commercial standards."

The Commission agrees with your determination that the WWJ–TV logs should have listed the entire program as commercial. A review of the script reveals that "The House Detective" appears to have been presented to promote the services of its sponsors and that any entertainment or informational aspects the program may have contained were wholly incidental to the commercial promotions.

The Commission is in receipt of a Station WWJ–TV log for February 18, 1973 which, as you have stated, discloses that the commercial duration of the two-hour program was logged as 30 minutes. An attachment to the log states:

> The time period from 10:00 AM—12:00 Noon is to be considered as commercial in its entirety. This note is made in accordance with letter to FCC dated March 14, 1973.

The attachment is signed by the program-production manager and dated March 14, 1973.

Section 73.670(a)(2)(ii) of the Commission's Rules and Regulations provides that the following be included in the program log:

> An entry or entries showing the total duration of commercial matter in each hourly time segment (beginning on the hour) or the duration of each commercial message (commercial continuity in sponsored programs, or commercial announcements) in each hour.

Section 73.670(d)(1) of the Commission's Rules and Regulations states in part:

> . . . If correction or additions are made on the log after it has been so signed, explanation must be made on the log or an attachment to it, dated and signed by either the person who kept the log, the station program director or manager, or an officer of the licensee.

The Commission has determined that the corrections to the station program logs made on March 14, 1973 regarding "The House Detec-

tive" program are not sufficient to relieve you of liability for the violations prior to that date since the violations continued until corrected after receipt of the Commission's letter of inquiry. Therefore it appears that WWJ–TV was in violation of Section 73.670(a)(2)(ii) of the Commission's Rules and Regulations for at least five days up to and including February 18, 1973 in that it did not properly show the commercial duration of "The House Detective" in its Sunday program logs.

The Commission has considered the circumstances of this case and has determined that pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended, you have incurred an apparent liability for forfeiture in the amount of five thousand dollars ($5,000) for willfully or repeatedly failing to observe Section 73.670(a)(2)(ii) of the Commission's Rules. This proceeding is confined to the violations which occurred within one year of the date of the issuance of this Notice of Apparent Liability.

Under Section 1.621 of the Commission's Rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $5,000 made payable to the Federal Communications Commission.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement must be signed by the licensee; a partner, if the licensee is a partnership; by an officer, if the licensee is a corporation, or by a duly elected or appointed official, if an unincorporated association. The statement may include any justification or any information that you desire to bring to the attention of the Commission. After consideration of your reply the Commission will determine whether any forfeiture should be imposed, and, if so, whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case the Commission will issue an order of forfeiture after expiration of the thirty-day period ordering that you pay the forfeiture in full.

Commissioner Hooks dissenting.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

F.C.C. 73-1360

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
THE EVENING NEWS ASSOCIATION, STATION WWJ-TV, DETROIT, MICH.
Concerning Violations of Ruling Prohibiting Program-Length Commercials

DECEMBER 19, 1973.

THE EVENING NEWS ASSOCIATION,
Station WWJ-TV,
622 Lafayette Blvd.,
Detroit, Mich. 48231

GENTLEMEN: The Commission has on this date issued to you a Notice of Apparent Liability for forfeiture for violation of the Commission's logging rules in connection with the broadcast by Station WWJ-TV of the program "The House Detective." The program consisted of films of apartments for rent and of houses, condominiums and land for sale with descriptions as to layouts, locations, availability, and purchase terms. The program had many sponsors including realtors, builders, development corporations, home improvement companies, and a credit union. Since 1968, it was broadcast on Sundays from 10:00 a.m. to 12:00 noon, except for occasional preemptions, and was terminated on February 18, 1973.

On September 24, 1972, an advisory ruling was issued holding that the broadcast of a weekly one-hour program of real estate advertisements would not be in the public interest and would not be consistent with Commission programming rules and policy. *WUAB, Inc.*, 37 FCC 2d 748 (1972). The program in the *WUAB* case was described as "one designed to promote the sale of houses listed with sponsoring real estate brokers." It was to "consist of visual slide displays of homes for sale, along with other information, including the name of the real estate broker to contact for further inquiries." This description is substantially similar to that of "The House Detective."

"The House Detective" appears to have been a program-length commercial and therefore violative of the Commission's policies. The Notice of Apparent Liability issued to you today concerned your apparent violations of the Commission's logging rules. This letter refers to your apparent failure to comply with the Commission's policies on broadcasting program-length commercials.

The Commission believes that the broadcast of any program-length commercial is a serious matter entirely aside from the violations of the logging rules which resulted from broadcasts involved here. It was this same concern that caused the Commission to issue the Public Notice, titled "Program-Length Commercials," 39 FCC 2d 1062, 26

RR 2d 1023 (1973), sent to all our broadcast licensees on February 22, 1973. In that Public Notice, we stated:

> 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. . . .

We stated further:

> 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.

The Commission has found that the questioned program constitutes a program-length commercial since the entire broadcast appears to have been presented to promote the services and products of the program's sponsors, and that any entertainment or informational aspects the program may have contained were wholly incidental to the commercial promotions contained therein.

Although the broadcasts of the program-length commercials on WWJ–TV ceased before the above Notice was issued, you had been put on notice by many prior Commission rulings of our policies with respect to this subject.[1] The program described in *WUAB, Inc.*, 37 FCC 2d 748 (1972), paralleled "The House Detective" and the public notice based on this ruling was released in October, 1972 (Mimeo No. 91067, Report No. 11010), yet WWJ–TV continued to broadcast the program until February, 1973.

In view of the foregoing, you are requested within twenty days of the date of this letter to submit a statement as to your future policies and procedures regarding the broadcast of program-length commercials. Your response, along with all other information relating to your qualifications to remain a licensee, will be considered in connection with your renewal application.

Commissioner Hooks dissenting.

By Direction of the Commission,
Vincent J. Mullins, *Secretary*.

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[1] Commission rulings include the following: *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67 (1971); and *WFIL, Inc.*, 38 FCC 2d 411 (1972).

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
WALTER I. BRYANT, FORT LAUDERDALE, FLA.
Concerning Fairness Doctrine Re Station
WPLG–TV, Miami, Fla.

DECEMBER 14, 1973.

Mr. WALTER I. BRYANT,
1616 NE. 17th Ave.,
Fort Lauderdale, Fla. 33305

DEAR MR. BRYANT: This is with reference to your letter to the Commission, dated October 15, 1973, concerning your desire to rebut editorials broadcast by Station WPLG–TV, Miami, Florida. In particular, you have cited the following editorial broadcast by Station WPLG–TV on April 16, 1973, entitled "Broward Density Flap Flops":

> Broward County's effort to finally exert some control over its future population density through a tax on new development is beginning to look like a lot of smoke and very little fire.
>
> Most of the Broward County commissioners appear ready to try every spectacular solution except the one that will work: getting help from the state Legislature.
>
> The county's state senators are well aware that Broward is growing too fast with too little controls; that its traffic is atrocious and getting worse, and that Broward voters want some relief.
>
> Yet Senator William Zinkil, for example, whose South Broward constituency is probably the most growth-conscious, has opposed giving the county legal controls. Zinkil can get away with its because so far the commission hasn't demanded Zinkil's help. Senators Chet Stolzenberg and Charles Weber also are quietly opposed.
>
> Senator David Lane's office said today he's too busy being Senate minority leader to spearhead the necessary reforms.
>
> It's time to put up or shut up. The Broward Commission should tell its legislative delegation whether it wants a state law to get the job done.
>
> This is a WPLG Editorial.

You state that the subject of "transportation in Broward County" is a controversial issue of public importance in the station's service area as evidenced by "the fact that they gave out editorials" thereon and by "the fact that we are second largest county in Florida, but . . . last in the return of our State and Federal Tax fund as well as road work." You state that in the above editorial, Station WPLG–TV took the position that the Broward County Commissioners "should have been going to the State Legislature for transportation needs," and that you believe that the present Port Commission should be "abolished and replaced with a transportation commission" and that the county "should go to the Governor and heads of State agencies with requests for State and Federal funds and programs, not Washington or the State Legislature."

Your previous correspondence has included a copy of a 750 word statement which you delivered at a "public meeting" concerning transportation problems in Broward County. You state that WPLG–TV refused you "the right to present" such remarks verbatim over its facilities, but offered you one and a half minutes of reply time.[1] You submit that such offer is not "sufficient," and also object to the station's policy of reserving a right to edit or reject replies to its editorials which are submitted for broadcast. You further state that your views on the subject of transportation in Broward County were entitled to broadcast coverage under the fairness doctrine and the "Florida in the Sun Law" which requires all governmental decisions to be made at "open public meetings." You contend that the "specific issue" presented by your complaint is your "right to rebut editorials" broadcast by Station WPLG–TV pursuant to its closing editorial statement that it welcomes "conflicting points of view from responsible spokesmen."

Aside from instances of personal attacks and certain cases involving legally qualified candidates for public office, no provision of the Communications Act nor any rule or policy of the Commission requires licensees to broadcast the views of any particular individual or group. Cf. Section 3(h) of the Communications Act of 1934, as amended; *McIntire* v. *William Penn Broadcasting Co. of Philadelphia*, 151 F. 2d 597, 601 (3d Cir. 1945).[2]

The fairness doctrine does require a broadcaster presenting one side of a controversial issue of public importance to afford reasonable opportunity for the presentation of contrasting views on that issue in his overall programming. However, the doctrine does not entitle any particular person or group to appear on the station, since it is designed to assure the right of the public to be informed, rather than any right on the part of any individual to broadcast his own views on any matter. 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 in the station's overall programming. *Report on Editorializing by Broadcast Licensees*, 13 FCC 1246, 1251–52 (1949). The Commission, upon proper complaint, will review a licensee's decisions in these matters only to determine whether the licensee has acted reasonably and in good faith.

As stated to you in previous correspondence, where complaint is made to the Commission under the fairness doctrine, the burden is on the complainant to set forth reasonable grounds for the conclusion that the licensee has presented only one side of a controversial issue of public importance and has not afforded, nor intends to afford, reasonable opportunity for the presentation of contrasting views on that issue in its station's overall programming. See *Allen C. Phelps*, 21 FCC 2d 12

[1] Your first letter concerning this matter, which was addressed to Commissioner Johnson, enclosed a copy of the station's offer to you of one minute and thirty seconds of editorial reply time. Inadvertently, such copy was not forwarded to this office with your original letter, and as neither that letter nor your subsequent correspondence mentioned the offer, this office was unaware of its existence until your most recent letter referred thereto.

[2] In this regard, the Florida "Sunshine Law," Fla. Stat., Sec. 286.011, does not purport to establish any obligation on the part of broadcast licensees to cover presentations made at the public meetings required under the statute. See letter to you from the Attorney General of the State of Florida, dated April 24, 1973, a copy of which you enclosed in your initial letter of complaint.

(1969). As the U.S. Court of Appeals for the District of Columbia has stated:

> 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 unbalance 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 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. *FCC*, 460 F. 2d 917 (D.C. Cir. 1972) (Emphasis added)

Assuming that the subject of "transportation in Broward County" constitutes a controversial issue of public importance in Station WPLG–TV's area of service and that the editorial in question presented one side of that issue,[3] the fact that the station has not broadcast your particular views on that subject does not in and of itself indicate that it has failed to comply with its fairness doctrine obligations since the station may have presented other spokesmen and views contrasting with its editorial. In this regard, your correspondence has been silent as to what other views, aside from the one presented in the editorial, may have been broadcast by the station.

More importantly, it would appear from the copy of the station's letter to you of May 3, 1973 that WPLG–TV has offered you an opportunity to reply to the editorial in question subject to a time limit of one and a half minutes. Although you submit that such amount of time is "insufficient," you have submitted no information or argument in support of that summary conclusion. It should be noted here that the station's editorial of April 16, 1973 was only approximately one minute in length, and the licensee is under no obligation to broadcast your proposed presentation verbatim without considering factors of editorial responsiveness and appropriate length.

Under these circumstances and upon the information which you have submitted, there is no indication that the licensee of Station WPLG–TV has failed to afford reasonable opportunity for the presentation of contrasting views on any controversial issue of public importance discussed in the editorial in question, or has otherwise acted unreasonably or in bad faith. Accordingly, no further Commission action appears warranted on your complaint 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, Wash-

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[3] The copy of the station's editorial of April 16, 1973 which you have submitted indicates that the primary subject discussed in the editorial was the county's "effort to . . . exert some control over its future population density through a tax on new development," rather than the different but perhaps related subject of transportation. Although the editorial stated that the county's "traffic is atrocious and getting worse," the fairness doctrine is not generally applicable on a statement-by-statement basis. As the Commission has stated:

> 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. *National Broadcasting Company, Inc.* (AOPA complaint), 255 FCC 2d 735, 736–37 (1970).

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.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
JOHN CERVASE
Concerning Fairness Doctrine Re Station
WOR–TV, New York, N.Y.

DECEMBER 14, 1973.

JOHN CERVASE, ESQ.
423 Ridge St.,
Newark, N.J. 07104

DEAR MR. CERVASE: This is in response to your petition of October 9, 1973 requesting the Broadcast Bureau to reconsider its action of September 19, 1973 on your fairness doctrine complaint against the licensee of WOR–TV, New York, New York. You request the Bureau to "make an additional conclusion of law defining 'reasonable grounds'" necessary to establish that the licensee, having presented one viewpoint during a discussion of a controversial issue of public importance, has failed in its overall programming to present contrasting views. You also contend that in any event, you have established such grounds.

You challenge the licensee's response that a number of news interviews with New Jersey Assemblyman Anthony Imperiale, broadcast on November 21, 27, 30 and December 4, 1972 and on February 12, 1973 and March 6, 1973, and an invitation for Mr. Imperiale to appear on the syndicated program, "Black On White," adequately presented contrasting views on the controversial issue of public importance, the Kawaida Towers project in Newark. You state that your position on the Kawaida Towers project is more moderate than that of Mr. Imperiale, and that the licensee "had a duty to discuss more than the extremists' views." You further contend that interviews with Mr. Imperiale did not occur within the context of a "discussion of a controversial issue of public importance," because they dealt with coverage of a "crisis involving Kawaida Towers," rather than the merits of the Kawaida Towers proposal. You further argue that the licensee presented only the pro-Kawaida view during a program addressed primarily to black people, and "WOR has a constitutional and legal duty not to censor the anti-Kawaida view from them."

With respect to the "reasonable grounds" necessary to establish a *prima facie* violation of the fairness doctrine, the complainant must set forth the basis for his claim that the licensee, during the discussion of a controversial issue of public importance, broadcast one viewpoint on that issue, and has not, in its overall programming, afforded reasonable opportunity for the presentation of contrasting views. *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 Fed. Reg. 10416 (1964). The licensee has

agreed with you that the Kawaida Towers project is a controversial issue of public importance, and does not dispute that Mr. Imamu Baraka, on the "Black On White" interview program broadcast on May 22, 1973, expressed one viewpoint on that issue. You have not, however, given any basis for your claim that the licensee, in its overall programming, has failed to afford reasonable opportunity for the presentation of contrasting views. It is not necessary that you monitor the licensee's programming continuously, over an extended time, but a complaint must contain more than a bare allegation that a licensee has failed in its overall programming to present such contrasting views. Where, as in this case, the licensee has responded with the claim that it has presented such contrasting views on a number of specified broadcasts and, further, intends to broadcast other programs on this issue in the future, it is incumbent upon the complainant to set forth with particularity the manner in which the licensee's efforts have been unreasonable. You have not made such a showing.

In regard to your contention that the licensee could not rely solely upon interviews with Mr. Imperiale to present viewpoints in opposition to the Kawaida Towers project, the selection of spokesmen is entirely within the discretion of the licensee, and you have presented no evidence to indicate that the licensee was unreasonable in its determination that Mr. Imperiale was a spokesman for the anti-Kawaida Towers viewpoint. You claim that your views are "more moderate" than Mr. Imperiale's. However, you have not shown that your views represent a significant, different view from the anti-Kawaida views presented by the station.

You also argue that the interviews with Mr. Imperiale were not broadcast within the discussion of a controversial issue of public importance, because their focus was on the "crisis" rather than the merits of the Kawaida Towers proposal. You have not shown how the material broadcast on the programs listed in the second paragraph of this letter did not present contrasting views on the Kawaida Towers issue. Moreover, you state that you "do not specifically remember these newscasts." Under these circumstances it is incumbent upon you to show how the licensee was unreasonable in determining that these programs presented contrasting views on the issue.

You have presented no evidence to indicate that the licensee acted unreasonably or in bad faith, or otherwise failed to comply with the fairness doctrine. Accordingly, your petition for reconsideration is denied.

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
HARVEY O'CONNOR
Concerning Fairness Doctrine Re Station
WRIB, East Providence, R.I.

DECEMBER 20, 1973.

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

RHODE ISLAND BROADCASTING CO.,
Licensee of Radio Station WRIB,
Water St.,
East Providence, R.I. 02914

GENTLEMEN: This letter constitutes a Notice of Apparent Liability for forfeiture pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended, and is issued under authority delegated to the Chief of the Broadcast Bureau by Section 0.281 of the Commission's Rules.

On August 21, 1973 the Commission received a complaint against Radio Station WRIB filed by Mr. Harvey O'Connor, stating that on July 19, 1973, WRIB broadcast a program in which Mr. O'Connor was called a Communist. In his letter of complaint, Mr. O'Connor said that on July 24 he wrote you asking for a transcript of the broadcast, and received in response a photocopy of parts of the 1957 Annual Report of the Committee on Un-American Activities of the United States House of Representatives. Mr. O'Connor stated that he wrote to you again on July 28 requesting a transcript of the broadcast, and that you failed to reply. On August 29, 1973, the Commission requested you to advise whether you had responded to Mr. O'Connor's complaint, and if so, to provide the Commission a copy of that response.

On August 31, 1973 your station manager, Mr. Arthur Tacker, wrote to Mr. O'Connor stating that because of a mailing error Mr. O'Connor had not received the transcript of the broadcast, and enclosed such transcript. Mr. Tacker's letter stated that "In my opinion as station manager, and with the written documentation as written evidence, I do not believe the broadcast was defamatory. Thus the reason for not offering you equal time in which to defend yourself."

In your September 5 reply to the Commission's August 29 inquiry, you enclosed a copy of your August 31 letter and stated that Mr. Cugini, the person making the broadcast in question, "was simply quoting, and thus no personal attack was involved." You also included with your response a tape recording of the broadcast, stating that should the Commission so "advise," you would be most happy to "allow Mr. O'Connor equal time in which to defend his cause."

In a further inquiry of September 12, 1973, the Commission requested you to state, in your opinion, whether the issues in the July 19 program were controversial issues of public importance at the time of the alleged broadcast, and if so, whether they constituted an attack upon the honesty, character, integrity or like personal qualities of an identified person or group. The inquiry further directed you to indicate, if you determined that a personal attack was broadcast, what steps you had taken to comply with your affirmative obligations under Section 73.123(a) of the Commission's Rules. In your September 17 response, you stated that "The issues discussed in the broadcast in question were, in my opinion, controversial issues of public importance at the time of the broadcast." You further stated "I do not consider the reference to the complainant to be an attack upon his person," and enclosed several pages from the 1957 Annual Report of the Committee on Un-American Activities.

Review of the tape which you provided reveals that on the broadcast in question, Mr. Cugini referred to Mr. O'Connor as "an identified Communist," as "Harvey O'Connor, who has been identified in sworn public testimony as a member of the Communist Party," and as "Harvey O'Connor, who's been identified as a Communist, who is dedicated to the destruction of my faith, my church, my country, and my culture."

Section 73.123(a) of the Commission's Rules provides:

> When, 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 licensee shall, 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 (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

A statement that a person or group is Communist constitutes a personal attack. *WIYN Radio, Inc.*, 31 FCC 2d 67 (1971), *Storer Broadcasting*, 11 FCC 2d 678 (1968). Therefore, the remarks by Mr. Cugini concerning Mr. O'Connor constituted a personal attack as defined by Section 73.123(a). The fact that Mr. Cugini allegedly was quoting from a "U.S. Congressional Committee Report" does not remove such remarks from the purview of the personal attack rule.

From the foregoing it appears that you violated Section 73.123(a) by broadcasting a personal attack and failing within one week of the attack to (1) notify Mr. O'Connor of the date, time, and identification of the broadcast during which a personal attack was made on him; (2) supply him with a tape, transcript or summary of the remarks; and (3) offer him a reasonable opportunity to respond.

For failure to comply with the obligations attending the broadcast of a personal attack, you are subject to forfeiture pursuant to Section 503(b)(1)(B) of the Communications Act as amended. In view of the serious nature of these violations, the Commission has determined that you have incurred an apparent liability in the amount of one thousand

dollars ($1,000) for willful or repeated failure to observe the requirements of Section 73.123(a) of the Commission's Rules.

Under Section 1.621 of the Commission's Rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $1,000 made payable to the Federal Communications Commission.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement must be signed by the licensee; a partner, if the licensee is a partnership; by an officer, if the licensee is a corporation; or by a duly elected or appointed official, if an unincorporated association. The statement may include any justification or any information that you desire to have considered. Upon such consideration it will be determined whether any forfeiture should be imposed, and if so whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case an order of forfeiture will be issued after expiration of the thirty-day period ordering that you pay the forfeiture in full.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON, *Chief, Broadcast Bureau.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
PROF. MARGARET E. STUCKI, SHELTON COLLEGE,
CAPE CANAVERAL, FLA.
Concerning Fairness Doctrine Re WCBS–TV

DECEMBER 11, 1973.

Prof. MARGARET E. STUCKI,
Chairman, Department of Art,
Shelton College,
Cape Canaveral, Fla. 32920

DEAR PROFESSOR STUCKI: This is in reply to your complaint of October 15, 1973 that WCBS–TV, in its program "Twentieth Century American Art," violated the fairness doctrine by broadcasting one viewpoint during a discussion of a controversial issue of public importance, and failing in its overall programming to afford reasonable opportunity for the presentation of contrasting views. You state that the controversial issue of public importance is whether abstract expressionism is the "first genuinely native style" in American art and whether it is "brilliant and far-sighted."

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.

On the basis of the information you provided us, we are unable to conclude that a viewpoint concerning the merits of a particular school of art involves a controversial issue of public importance, rather than a question of personal taste or artistic judgment. Merely because a particular subject is considered to be of informational or educational value and of interest to the viewing public does not necessarily indicate that such subject constitutes a controversial issue of public importance within the meaning of the fairness doctrine. See *Healey* v. *Federal Communications Commission*, 460 F. 2d 917 (1972), *Letter to Mrs. H. B. Van Velzer*, 38 FCC 2d 1044 (1973). None of the material which you have furnished the Commission indicates that, at the time of the broadcast of the program in question, the abstract expressionism school art was the subject of public controversy or debate such as would demonstrate that it was a controversial issue of public importance within the meaning of the fairness doctrine. Upon the information you have presented, no further Commission action 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.

F.C.C. 73-1261

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of GREATER INDIANAPOLIS BROADCASTING CO., INC., WHEELING, W. VA. For Renewal of License of Station WXLW	BR-2253

NOVEMBER 28, 1973.

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

GREATER INDIANAPOLIS BROADCASTING CO., INC.,
Licensee of Station WXLW,
Indianapolis, Ind.,
c/o P.O. Box 152,
Wheeling, W. Va. 26003

GENTLEMEN: The Commission has under consideration: (1) your application for renewal of license for Station WXLW (BR-2253); (2) the Commission's letter of June 27, 1973, to Greater Indianapolis Broadcasting Company, Inc., concerning the broadcast by WXLW of apparently false, misleading, or deceptive advertising in connection with the promotion of a contest called the "XL-95 Golf Classic"; (3) your response dated August 29, 1973, to the Commission's letter; and (4) the results of an investigation conducted into the affairs of Station WXLW.

In our letter of June 27, 1973, we requested your comments regarding your broadcast of advertisements promoting the "XL-95 Golf Classic." As stated in our letter, you broadcast announcements which advertised that it was possible for contestants to win prizes in the "$25,000 amateur golf classic," and that there were available "Over $25,000 in prizes and you can win." However, with regard to the magnitude of the value of prizes, the field investigation revealed that some $10,000 worth of prizes were to be given away in a "Celebrity Tournament" operated as a part of the "Golf Classic." The prizes in the "Celebrity Tournament" were awarded to the charity of the winner's choice, and therefore not available to be won by the individual contestants comprising WXLW's listening public. Further, of the $15,000 worth of prizes actually available to the public, $9,000 worth of prizes could only be won by making a "hole in one" while playing golf. None of these limitations were disclosed in the promotional announcements broadcast by WXLW. The announcements were broadcast every day from June 6 through September 5, 1972.

In your letter of August 29, 1973, you state:

> The Celebrity Tournament we felt, would be a good public service to the community, helping various charities. We have always felt that legitimate charitable organizations are the public and a great service to the public. The ten thousand dollars in prizes that went to the charities did go to the public.

You agree that the "hole in one idea should have been publicized as should all other ways the prizes were awarded, for example: the ball closest to the hole on certain greens, the ball that was closest to a power mower . . . on the course won the mower, etc." However, you state that the rules concerning these aspects of the contest were not publicized by the station's personnel as they were directed to do. You state that everyone who played in the "Golf Classic" won something; that everyone was supplied free refreshments, and that no one paid to play golf. You state that WXLW delivered to winners prizes promised by previous employees. You state that WXLW lost over $5,000 in cash because of the contest, and that it was a "complete disaster to WXLW financially". You summarize your argument stating:

> We made some errors because of our turmoil over three different managers and problems of personnel not following orders and directives as given them and doing these things without our knowledge at the time. We, however, DID NOT intend to mislead the public. We DID NOT with our knowledge broadcast any false, misleading or deceptive advertising. We tried in every way within our power to deliver the prizes to those who won them, and we have some satisfaction that some worthwhile charities are a little better off because of the WXLW "Golf Classic".

We have considered your response and all the facts and circumstances in this case, and we believe your explanation of your actions to be inadequate. In our letter of June 27, 1973, we cited our Public Notice released November 7, 1961, entitled "Licensee Responsibility with Respect to the Broadcast of False, Misleading, or Deceptive Advertising," FCC 61–1316. In the Public Notice it was stated: "With respect to advertising material the licensee has the additional responsibility to take all reasonable measures to eliminate any false, misleading or deceptive matter . . . This duty is personal to the licensee and may not be delegated." We also cited *KOLOB Broadcasting Company, Inc.*, 36 FCC 2d 586 (1972) at page 587, where we said:

> The Commission requires that licensees that conduct contests adequately supervise and control the contests to assure that they are conducted fairly and are substantially as represented in announcements to the public.

The evidence indicates a clear lack of supervision by the licensee in the case of the "XL–95 Golf Classic." Although you assert your lack of intent to broadcast deceptive advertising, the Commission requires not only absence of intent, but reasonable effort by the licensee to assure that deceptive advertising is not broadcast on the licensed facility. As we said in our Public Notice, cited *supra*, "This duty is personal to the licensee and may not be delegated." Further, while you assert that the $10,000 in prizes to be given to charities did go to the public, it was not available to the contestants. Moreover, taking into consideration the odds against hitting a hole in one, the failure to disclose this limitation is a substantial omission. We believe that the announcement, "Over $25,000 in prizes and you can win," was misleading in that it did not state the limitations that $10,000 in prizes would be donated to charity, and that $9,000 of the remaining prizes would be awarded only if a participant hit a hole in one. We further believe since the announce-

ments were broadcast from June through September, 1972, that you did not take reasonable measures to eliminate false, misleading or deceptive matter, as required by the 1961 Public Notice, *supra*. However, the evidence indicates that the licensee relied on a series of managers who failed to carry out the licensee's instructions. There is no showing that the licensee ever checked to assure itself that its directives were being carried out as ordered. When taken as a whole, we are of the view that your lack of control and supervision over the contest and its promotion fell far short of the required degree of licensee responsibility.

In view of the foregoing, we are unable to make an affirmative finding that the public interest, convenience and necessity would be served by the renewal of your license for the normal term. Instead, and in order that we may have an earlier opportunity to review the operation of Radio Station WXLW, we are granting short term renewal of license for the period ending December 1, 1974.

Commissioners Johnson and H. Rex Lee concurring in the result.

By Direction of the Commission,
Vincent J. Mullins, *Secretary*.

F.C.C. 73-1336

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Application of HUGHES AIRCRAFT CO. (NATIONAL SATELLITE SERVICES, INC.) For Authorization To Construct Three Satellites To Provide Domestic Communications Satellite Services	File No. 5-DSS-P (3)-71
GTE SATELLITE CORP. For Authorization To Lease Satellite Transponders and To Construct Five Earth Stations To Provide Domestic Communications Satellite Services	Docket No. 19812 Files Nos. 14-DSE-P-71, 15-DSE-P-71, 16-DSE-P-71, 17-DSE-P-71, 14-DSE-P-73

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released December 26, 1973)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT.

1. The Commission has before it: "Comments of Western Union International, Inc." (WUI) seeking partial reconsideration of the authorization to GTE Satellite Corporation (GSAT) in our Memorandum Opinion, Order and Authorization of September 12, 1973 on the above-captioned applications (FCC 73-961); a response by GSAT, and reply comments by WUI.

2. WUI points out that it now provides record/voice services between Hawaii and the Mainland via both submarine cables and Intelsat satellite facilities, and has an ownership interest in existing satellite earth stations in Hawaii, California, and Washington. If the GSAT system replaces the Intelsat system insofar as satellite service between Hawaii/Mainland is concerned, WUI must be assured of economic, equitable and non-discriminatory access to the GSAT system in order to comply with the rate integration obligations imposed on it by paragraph 38 of the *Second Report and Order* in Docket No. 16495 (35 FCC 2d 844, 857-858). At a bare minimum, WUI states, this should include an ownership interest in the appropriate GSAT earth stations and the use of the GSAT authorized space segment on a per circuit cost basis proportionate to GSAT's own lease payments to National Satellite Services, Inc. (NSS). WUI requests that the Commission so condition GSAT's authorization and retain jurisdiction in this matter.

3. In response GSAT notes that its application states that GSAT "will make available to record carriers on a fully allocated cost basis those available circuits not required to meet our own requirements between Hawaii and the Mainland" (GSAT application, Part 1, pp.

4–6). In view of this commitment and the requirements set forth in the *Second Report* and the GSAT authorization of September 12, 1973 (FCC 73–961), GSAT claims there is no need for Commission action of the type suggested by WUI.

4. In the *Second Report* (paragraph 38) we adopted a requirement that record carriers now providing services to Hawaii (as well as Alaska and Puerto Rico) submit proposals for the integration of their charges for TELEX, private line and other specialized services into the domestic rate pattern within the same timetable and framework set forth for domestic satellite licensees authorized to provide MTT service to these points. We further stated (*id.*): "To make implementation possible, we will expect space segment and earth station licensees authorized to serve those overseas points to afford appropriate access to such facilities to the relevant international record carriers for the provision of domestic services." In paragraph 40, we stated that GSAT is under a requirement to "reserve adequate transponder and earth station capacity for lease to other carriers authorized to provide specialized services to these points in such manner as will not necessitate another earth station antenna in addition to those used for MTT service." On reconsideration we said that the "question of whether such 'appropriate access' should be afforded pursuant to a tariff offering by the supplying carrier or through a proportionate investment or rental interest in the facilities of the supplying carrier will be determined upon consideration of applications for authority to obtain such access and the responsive pleadings of the supplying carrier." *Memorandum Opinion and Order* in Docket No. 16495, 38 FCC 2d 665, 696.

5. While it is thus clear that GSAT is under an obligation to afford WUI and other record carriers "appropirate access" to the relevant earth station and space segment capacity of the GSAT system, we believe that the most appropriate course is for the carriers concerned to negotiate an agreement rather than for us to prescribe at this time what constitutes "appropriate access." In this connection we point out that our action in granting the GSAT construction permits for the earth stations and authority to lease transponders from NSS is not to be construed as approving the access proposal in its application (paragraph 3 above). On the contrary, to the extent that GSAT proposes to limit its obligation to make circuits available to those not needed for its own requirements as GSAT interprets them, we reject the proposal as contrary to the above quoted requirements in paragraph 40. Upon consideration of the pleadings herein, we are of the view that the record carriers need to know the access terms in order to formulate their rate integration proposals—due on March 12, 1974. Accordingly, we will direct GSAT to negotiate in good faith and in light of the views set forth herein with WUI and other affected record carriers in an effort to arrive at mutually agreeable access terms and to submit within 45 days a statement embodying such agreement. In the event that the parties are unable to reach agreement within 45 days, they shall each submit a separate statement setting forth their positions and the reasons therefor, and the Commission will prescribe the nature of the access to be accorded the record carriers.

6. In paragraph 58 (5) of our order of September 12, 1973 herein, we specifically retained jurisdiction to "implement our policy with

respect to the integration of rates for classes of service other than MTT which GSAT is now or may hereafter be authorized to provide to and from Hawaii." While the licensing policies promulgated in Docket No. 16495 are subsumed in any domestic satellite grant, we will also retain express jurisdiction to implement our rate integration policy through a condition on the GSAT authorization prescribing the nature of the access to be accorded the record carriers.

7. Accordingly, IT IS HEREBY ORDERED that:

(a) The Memorandum Opinion, Order and Authorization issued herein on September 12, 1973 (FCC 73-961) IS MODIFIED to add the following sentence at the end of paragraph 58 (5): Jurisdiction is also retained to implement such policy through a condition on the GSAT authorization prescribing the nature of the access to the GSAT domestic satellite facilities and earth stations to be accorded to the international record carriers for the provision of their Hawaii/Mainland services.

(b) Within forty-five days from the release of this order GSAT shall submit a statement setting forth the nature of the agreement it has negotiated with the record carriers with respect to access to the GSAT domestic satellite and earth station facilities for provision of their Hawaii/Mainland services. In the event of disagreement, GSAT and the record carriers shall submit separate statements setting forth their respective positions within forty-five days from the release of this order.

(c) The relief requested by WUI IS GRANTED to the extent reflected herein and IS OTHERWISE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1239

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of MOCATTA METALS CORP., COMPLAINANT *v.* ITT WORLD COMMUNICATIONS, INC., DEFENDANT	Docket No. 19799

MEMORANDUM OPINION AND ORDER

(Adopted November 28, 1973; Released December 4, 1973)

BY THE COMMISSION:

1. On July 13, 1973 the Mocatta Metals Corporation, 25 Broad Street, New York, New York (hereinafter referred to as "Mocatta") filed a formal complaint against ITT World Communications, Inc., 67 Broad Street, New York, New York (hereinafter referred to as "ITT"). In its complaint Mocatta set out a number of allegations as to why the carrier service provided it by ITT was either in violation of (i) ITT/FCC Tariff No. 43 or (ii) Section 201 of the Communications Act of 1934, as amended. Concomitant with its request that this Commission investigate the alleged unlawful practices of ITT, Mocatta also requested that we issue an injunction against ITT to prevent the carrier from terminating their service. In a Memorandum Opinion and Order (FCC 73-822) in Docket No. 19799, released August 14, 1973 the Commission rejected Mocatta's request for an injunction concluding that the circumstances of this case in no way justified the extraordinary relief request. However, the Commission retained jurisdiction over the substantive issues raised in Mocatta's complaint. ITT responded on August 21, 1973.

2. In its reply, ITT asserts two affirmative defenses. First, ITT claims that Mocatta's complaint must be dismissed because Mocatta is seeking to pursue a remedy before two separate forums in violation of Section 207 of the Act.[1] Secondly, ITT claims that the damages sought by Mocatta are barred by the Statute of Limitations set forth in Section 415(b) of the Act.[2]

3. Ordinarily, the facts presented in this case, plus the Section 207 affirmative defense asserted by ITT would result in a dismissal of the complaint. However, because of the unusual circumstances surrounding this case we are forced to reach a different conclusion.

[1] Section 207 of the Act provides as follows:
Any person claiming to be damaged by a common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district court of the United States of competent jurisdiction; *but such person shall not have the right to pursue both such remedies.* (Emphasis added)

[2] Section 415(b) provides as follows:
All complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within one year from the time the cause of action accrues . . .

(a) Firstly, we must point out that Mocatta filed its formal complaint with the Commission "several weeks after it filed its summons and complaint in the U.S. District Court" because the District Court in effect ordered Mocatta to make such a complaint. On July 3, 1973 the District Court issued a two week extension of a previously imposed temporary restraining order against ITT "to permit plaintiff [Mocatta] to make application to the FCC." [3] In other words, Mocatta, by complying with the lawful orders of the District Court now finds itself in a Section 207 dilemma: in such a situation, for us to simply dismiss the complaint would be both inequitable and unjust.

(b) As to ITT's secondary justification for dismissing this suit on Section 207 grounds, i.e., because of ITT's present counterclaim in the court we must also disagree. While we appreciate the position of ITT we do not see how we could legally adopt such a position. Section 207 of the Act sets out two forums wherein a complainant can receive a hearing, if a complainant should choose to have his complaint heard by this Commission in lieu of a court, we cannot legally deny the complainant this statutory right. Moreover, since this, like most complaints against carriers raise questions and issues that are particularly within the special competence of this Commission to resolve, it would be incongruous, from both a practical as well as a legal position, for the Commission to impose unwarranted limitations on its statutory authority to hear complaints.[4]

5. While ITT does not make its Section 415(b) defense altogether clear, it appears that they are attempting to assert that the February 2, 1972 date specified in the contract between Mocatta and ITT as the operational date of the communications system is also the date that Mocatta's cause of action accrued. If this was the intent of ITT it must be rejected. Here, as *In the Matter of the Bunker Ramo Corp.* v. *the Western Union Telegraph Co.*, 28 FCC 2d 617, 618 (1971):

> . . . the complaint alleges certain facts occuring within one year prior to the filing of the complaint that allegedly constitutes violations of the Act. Thus, we cannot agree that the complaint on its face, is barred by Section 415 of the Act.

Therefore, we find that the claims of Mocatta are within the required "one year from the time the cause of action accrues" and that the complaint is not in violation of Section 415(b) of the Act.[5]

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[3] July 3, 1973 Order issued by Whitman Knapp, U.S.D.J., U.S. District Court, Southern District of New York.

[4] See L. Jafee, Judicial Control of Administrative Action 121 (Abridged Edition 1965) and 3 K. Davis, Administrative Law Treatise one (1958). See also *Booth* v. *American Telephone and Telegraph Co.*, 253 F. 2d 57 (7th Cir. 1958).

[5] It should further be pointed out that we are not at all certain that Section 415(b) of the Act is even applicable in this case. Section 415(b) provides a statute of limitations when the complainant is seeking to recover damages; however, in this case the issue of damages has not even been raised, the only money in controversy is what might rightfully be defined as an overcharge. Section 415(c) of the Act is specifically designed to provide a statute of limitations when an overcharge is involved. Section 415(c), like Section 415(b) provides a one year statute of limitation, but Section 415(c) also provides:

> . . . that if claim for the overcharge has been presented in writing to the carrier within the one year period of limitation said period shall be extended to include one year from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

While neither party makes it clear as to whether the following notice was in writing both parties admit that on October 25, 1972 Mocatta informed ITT that "it would not pay for the system until it was entirely operational." Such a message by Mocatta, within one year of the date of contract, could very easily be interpreted as the type notice necessary to toll the statute of limitations. If this is so, Mocatta has an even stronger case for not being time-barred from presenting its claim.

6. We have therefore, rejected both of ITT's affirmative defenses. However, in ITT's first affirmative defense it also requested that, if we should reject that defense and find Mocatta's complaint not in violation of Section 207, then we should require Mocatta to select the forum wherein it intends to prosecute its alleged claims. The practical as well as legal difficulties incurred in attempting to resolve the same matter before two separate forums is reflected in Section 207 of the Act. Section 207 of the Act will not permit Mocatta to go forward with a complaint before the Commission while it litigates the same claim before a District Court. If Mocatta is to meet the requirements of Section 207 of the Act it must decide in which of the two appropriate tribunals it will continue to press its claim. Therefore, we will accede to the proposal of ITT and require that Mocatta decide in which forum it will seek its remedy.

7. Accordingly, IT IS ORDERED, That the affirmative defenses asserted by ITT be rejected. IT IS FURTHER ORDERED, That the Mocatta Metals Corp. complaint be entertained. However, the Mocatta Metals Corp. must notify this Commission within fifteen (15) days of publication of this Order, whether it intends to press its July 13, 1973 complaint against ITT before this Commission. Notification should include proof of dismissal of its June 25, 1973 complaint against ITT in the District Court, Southern District of New York. Failure to respond with the requisite notification will result in dismissal of the complaint before this Commission.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1248

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of JOHN HAWKINSON ET AL., ASSIGNOR, AND JOHN BLAIR & Co., ASSIGNEE For Transfer of Control of WHDH Corp., Boston, Mass.	BTC-7182

NOVEMBER 28, 1973.

Mr. BERNARD T. MCCORMACK,
110 Hudson Terrace,
Yonkers, N.Y. 10701

Mr. ANDREW A. HUTH,
31 Westbury Rd.
Garden City, N.Y. 11530

GENTLEMEN: This is in reference to your complaint protesting the application to transfer control of WHDH Corporation, licensee of Station WHDH and WCOZ-FM, Boston, Massachusetts, from John Hawkinson, Robert F. Carney, George E. Akerson, William J. McCarthy, et al., to John Blair & Company (BTC-7182).

The complaint alleges that underhanded dealings could be found in Blair's dealings to acquire control and that Blair pursued its objective by making "sweetheart" arrangements with WHDH's management, friends and other insiders, while leaving other minority shareholders in the lurch. The complaint further alleges that acquisition of broadcast stations by a national sales representative would be anti-competitive. Subsequent to the filing of the complaint you informally indicated to the Commission's staff that since you had sold all shares of stock in WHDH Corporation you intended to dismiss the complaint. However, since nothing has been received in writing dismissing the complaint, the Commission has considered, as set forth below, the substantive questions raised by you.

In response to the complaint, Blair, in denying any sweetheart-insider trading, states that it did not offer to buy the stock of all WHDH shareholders because to do so Blair would have had to make a public tender subject to the withdrawal provisions of Section 14 (d) (5) of the Securities Exchange Act of 1934, as amended, which is not practical in broadcast transactions subject to FCC consent. Blair further states that its full intention to acquire 100% ownership of WHDH was made in a written statement distributed to all shareholders attending the WHDH annual meeting on April 11, 1973. The same statement was filed with the SEC on April 2, 1973. Moreover, as reported in the Boston *Herald-American* on October 19, 1973, Blair has subsequently made an offer to acquire all remaining shares of WHDH stock at the same price, $33 per share, it is acquiring the stock in the above-mentioned application.

As you are aware, you also filed your insider trading complaint with the Securities and Exchange Commission. The Commission has been informally advised that your complaint was reviewed by the SEC staff and they determined that John Blair & Company had fully complied with the SEC's rules and regulations on insider trading. From the foregoing it is clear that Blair has attempted to deal fairly and openly with all stockholders of WHDH Corporation.

In response to the allegation that Blair's acquisition of broadcast stations would be anti-competitive in that Blair is a national sales representative, Blair states that such acquisition is not unusual as numerous other broadcast licensees own national sales representative companies. In fact, acquisition of broadcast stations by national sales representatives is not inconsistent with Commission policy. See *Golden West Broadcasters*, 16 FCC 2d 918 (1969). Since John Blair & Company represents no other stations in the Boston market and has affirmatively represented that it will not use its position as a national sales representative to favor its stations or discriminate against stations it represents, we conclude this proposal complies with the above-stated policy.

Upon review of all your charges and allegations, we conclude that there are no remaining substantial and material questions of fact. Accordingly, the Commission has, on November 28, 1973, granted the above-mentioned application.

Commissioners H. Rex Lee and Wiley concurring in the result.

By Direction of the Commission,
Vincent J. Mullins, *Secretary*.

F.C.C. 73-1253

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to KILIBRO BROADCASTING CORP., RADIO STATION KFIV, MODESTO, CALIF. Concerning Violations of Section 73.111 (b) of Commission Rules	

NOVEMBER 28, 1973.

KILIBRO BROADCASTING CORP.,
Radio Station KFIV,
P.O. Box 1360,
Modesto, Calif. 95350

GENTLEMEN: A field investigation of Station KFIV was conducted in October of 1972. The following matters were disclosed in that investigation.

A small portion of the program logs reviewed were illegible, in violation of Section 73.111(b) of the Commission's Rules. Since the statute of limitations has run for these violations, no forfeiture sanction can be imposed. However, the Commission expects compliance with its rules and you are admonished that no further violations of Section 73.111(b) are anticipated.

The matters discussed below are based, in part, on information contained in your logs. Since some of the logs were illegible, the figures set out below are approximations. In view of the small portion of the logs that could not be read, it is apparent that the figures are substantially correct.

The field investigation disclosed that during 1971 and 1972, you broadcast five special advertising packages. Three of these were analyzed to determine whether advertisers were receiving the commercials they purchased. Each of the three packages were sold by independent contractors, who also collected the money in advance.[1] You issued no bills or invoices, although in a few cases you sent reminders to advertisers who were to make payments directly to the station. In these cases, the commercials would not be broadcast if payment was not received.

On June 17, 1971, you entered an agreement with Universal Publicizers, Inc. (Universal), in which Universal agreed to sell a "Mike Radio" advertising package. Universal undertook to write the advertising copy, in addition to selling and collecting the accounts. The advertisers, in return for $399,[2] were to receive five 75-word announcements each week for one year, plus an AM radio, tuned to KFIV,

[1] In one of the package deals, which lasted a year, payments could be made to the station by the independent contractor in three installments.
[2] A five per cent discount was given to any advertiser paying in full when the contract was signed.

that had KFIV's call sign and frequency affixed. You were to receive $85 for each account sold by Universal.

Universal sold 48 "Mike Radio" accounts, of which 39 were for the full year, with the remainder for lesser periods of time ranging from one to five months. At the time of the investigation, you had received a total of $3,506 from Universal for the "Mike Radio" package. Ten of the full-year accounts were selected at random and were checked against your program logs to determine the number of commercials actually broadcast. The following information was disclosed:

Name of account	Commercials purchased	Commercials broadcast	Commercials missed
Hughson Pharmacy	260	131	129
Jasper Hardware	260	179	81
Jack Morris Real Estate	260	131	129
Abe's Discount Plumbing	260	124	136
Cox Brothers Tire Service	260	159	101
Wickes Lumber	260	175	85
Lynch Art	260	161	99
Center Beauty Salon	260	104	156
Valley Food Center	260	118	142
Jackie's	260	161	99
Total	2,600	1,443	1,157

Although your logs reveal that in some months the accounts received more than the five announcements per week called for in the contract, they also reveal that no "Mike Radio" announcements were broadcast during December, 1971, January, February, June, July, August, September or the first ten days of October, 1972. The announcements appear in the logs of only two weeks in the months of November, 1971, and March, 1972. Thus, none of the sales contracts for the "Mike Radio" package were substantially performed.

A second advertising package, called "Project Cold Turkey," was sold by Orland Frederick, also known as Fred Arthur. The package was sold in several plans, which varied as to duration and number of announcements. All the plans included 30-second anti-drug announcements furnished by the Bureau of Customs, U.S. Treasury Department. These announcements were followed by brief mentions of three to five advertisers. The anti-drug announcements and the mentions of advertisers totaled 60 seconds, which you logged as commercial time. Two of the plans most frequently sold included regular commercial announcements, in addition to the mentions following anti-drug announcements. Mr. Frederick sold a total of 154 packages. You received over $12,000 for these packages, of which over $6,000 was paid back to Mr. Frederick as his share of the proceeds.

Under the terms of the contracts, a total of 9,240 promotional mentions following anti-drug announcements and 1,872 regular commercial announcements should have been broadcast. An examination of your logs for the period from June 1, 1972, through October 10, 1972,[3] disclosed a total of 360 anti-drug announcements. However, the spon-

[3] Of the 154 accounts sold by Mr. Frederick, 129 specified starting and end dates. The earliest start date was June 16 and the latest end date was October 6, 1972. The Commission has information indicating that a stop order, effective October 6, 1972, was issued by the station's program director. Moreover, the program logs fail to disclose any anti-drug announcements in the period from August 14, through October 10, 1972.

sors of the announcements were not entered in the program logs in violation of Section 73.112(a)(2)(i)(*b*).[4] It is not possible, therefore, to determine which or how many advertisers were mentioned along with each anti-drug announcement. However, the investigation revealed that only three to five mentions were made along with each anti-drug announcement. The maximum number of mentions would be 1,800 (5 x 360), although the total purchased by advertisers was 9,240.

It is also noted that no anti-drug announcements were logged as broadcast after August 14, 1972, although contracts for 80 of the accounts specified announcements after that date. In fact, ten accounts specified August 18, 1972 as the start date, with announcements continuing through October 6, 1972. Thus, you totally failed to perform any part of these ten contracts.

Mr. Frederick sold 129 accounts that included regular commercial announcements as well as mentions associated with the anti-drug announcements. Ten of these accounts were selected at random and the logs checked to determine how many commercial announcements were actually broadcast. Each of the advertisers purchased 16 100-word announcements. The logs reveal:

Name of account:	*Commercials broadcast*
Title Insurance	4
M & M Builders	4
Trombetta Lighting	4
Winco Interprises	0
Julia Kiddie Shop	4
Ron's Barber Shop	12
Safe-T-Lite	11
Atterbury Sewer	12
Tony's Place	12
Rush Office Equipment	11

Thus, with respect to both the anti-drug announcements and the regular commercial announcements, you did not fulfill your contractual obligations to those purchasing the "Project Cold Turkey" advertising package.

The third advertising package that was analyzed was called a "Safety Campaign." The independent contractor was Ms. Claudia Flake, who sold the package to ten advertisers, nine of whom were to receive one 30-second commercial announcement per day for 100 days at a cost of $100. The remaining account was to receive two 30-second announcements per day for fifty days at a cost of $100. Ms. Flake turned over her collections to you and you repaid 30 per cent ($300) of the total collected to her. An analysis of five of the ten accounts disclosed the following:

Name of account	Commercials purchased	Commercials broadcast	Commercials missed
The Ranch	100	93	7
Montica Trailers	100	94	6
Voyager Cove	100	52	48
N & S Appliance	100	0	100
Poker Flat Resort	100	41	59
Total	500	280	220

[4] Again, the statute of limitations has run as to these violations.

Although the contracts stated that the announcements would be broadcast once daily for 100 days (twice daily for the Poker Flat Resort account), no announcements were broadcast on Mondays. The Poker Flat Resort account never received two announcements per day.

No substantial evidence was found to establish that the discrepancies noted above were intentionally authorized or permitted by you. However, the facts that the discrepancies were so substantial and occurred over a long period of time indicates, at best, an inadequate level of supervision and control of the station's operations that resulted in an obvious failure to exhibit the degree of responsibility expected of licensees, and a failure to meet your obligations to your advertisers.

This letter will be associated with Station KFIV's files and the matters set out above will be considered again at the time your next application for renewal of license is filed.

Commissioner Johnson dissenting.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

F.C.C. 73-1361

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

RICHARD N. MALLER, 56 REED ST., WESTBROOK, MAINE, COMPLAINANT
v.
NEW ENGLAND TELEPHONE CO. (TELCO), 185 FRANKLIN ST., BOSTON, MASS., DEFENDANT

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released January 3, 1974)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT; COMMISSIONER WILEY DISSENTING.

1. We have before us a formal complaint under Section 208 of the Act filed on December 9, 1971 by Mr. Richard N. Maller against Telco (the New England Telephone and Telegraph Company) concerning alleged harassing debt collection calls made by Federated Credit Corporation, Reading, Massachusetts, over the interstate telephone network.

2. This complaint has its origin in a Public Notice we issued on June 10, 1970 (FCC 70-609), expressing our concern over the then increasing use of interstate telephone service for debt collection in ways that appeared to be in violation of applicable tariffs of the telephone companies and the criminal statutes. We noted therein that the tariffs of the telephone companies forbid use of the telephone ". . . for a *call* or calls, anonymous or otherwise, if in a manner reasonably to be expected to *frighten*, *abuse*, *torment* or *harass* another"; or for calls that "interfere unreasonably with the use of the service by one or more other customers"; or calls for "unlawful purpose." (our emphasis) We stated that, upon violation of any of these conditions, the telephone company may, by written notice, discontinue service "forthwith." (See Sections 2.2.2, 2.2.3, and 2.4.3 of FCC Tariff No. 263 of American Telephone and Telegraph Company). We also made reference to the provisions of Section 223 of the Communications Act of 1934, as amended, which makes it a crime for any person in interstate or foreign communications by means of telephone to make "repeated telephone calls, during which conversation ensues, solely to harass any person at the called number" or knowingly permit "others to use his telephone" for such purpose. 47 U.S.C. 223 Our objective in issuing the Public Notice was to inform the public of the requirements of law in this area and to alert users to their legal obligations and the penalties for failure to abide thereby.

3. On the same date that we issued our Public Notice, we directed letters to the Bell System and other telephone companies calling for prompt and effective steps by telephone companies to inform all

present and potential users of their obligations under the tariffs and statutes and of the possible sanctions for violations. We also requested the telephone companies to take such additional measures as may be necessary to assure vigorous enforcement of the applicable tariffs without interfering with legitimate business usage, i.e., use of interstate telephone service to aid in the collection or payments of debts or for resolving, in a reasonable manner, bona fide disputes as to whether a debt is owed and, if so, in what amount.

4. On October 16, 1970 complainant's attorney filed an informal complaint with the Commission alleging that abusive and harassing debt collection calls had been placed to complainant's home by Federated Credit Corporation (hereinafter Federated). A tape recording was made of one of the calls initiated by Federated in October, 1970. On November 2, 1970 Telco provided complainant with unpublished telephone service. On December 8, 1970, the informal complaint was forwarded by us to Telco with the request that, pursuant to Section 1.717 of the Commission's Rules, the complaint be satisfied or the Commission advised of the carrier's refusal or inability to do so. On January 14, 1971 Telco informed us that it was investigating the matter.

5. In a letter dated April 6, 1971, Telco advised us that it had discussed the alleged calls with complainant's attorney, who indicated that the complainant had received abusive and threatening calls prior to October, 1970 but that the calls had ceased when complainant changed his telephone number to an unpublished number. Telco also stated that it had interviewed the manager of Federated, who informed Telco that Federated's records did not show the number of calls to complainant, that the last call to complainant was made in August, 1970, and that in Federated's view, the calls were not harassing or abusive or so intended. Telco further stated in its letter that its review of the business toll records associated with Federated's account from October, 1970 to April 6, 1971 failed to disclose any calls to complainant's home phone number and that records prior to October, 1970 had not been retained. Telco concluded by stating that, due to the conflicting testimony of both parties to the dispute and lack of any further evidence, there was no basis for it to decide that the calls in question were made in a manner violative of Telco's tariffs.

6. Since it appeared that Telco may have reached its conclusion without inquiring into the content of the recorded call in October, 1970, we requested the company to listen to the tape recording. In this way Telco could determine whether it contained any material which Telco considered harassing or abusive and in violation of its tariff. Telco responded on June 25, 1971 and stated that initially the tape was not readily available when it first talked with complainant's attorney and that, inasmuch as the recording had been obtained without the use of a beep tone or an announcement that the telephone conversation was being recorded, Telco concluded that such recording would probably not be admissible in evidence and the matter of the tape recording was not pursued by Telco at that time. However, Telco stated that, pursuant to our request, it had listened to the recording and that in Telco's opinion, the caller was abusive on that call. Finally, Telco stated that it had previously explained the applicable tariff

provisions and possible sanctions for violations to the manager of Federated, and that if there were any evidence of further continuous abusive calls from Federated, then Telco would follow established procedures by issuing another warning, and if this was not heeded, a legal review of the case would be made and service disconnected. On July 8, 1971 we informed complainant of Telco's June 25, 1971 response and requested that the complainant advise us if he became aware of any further abusive calls from Federated and that he provide the details of such call or calls including time, content, etc.

7. Not satisfied with the results achieved by the informal complaint, Mr. Maller filed the formal complaint on December 9, 1971 that is now before us. Complainant challenges, *inter alia*, Telco's action of providing him with unpublished service on November 2, 1970 claiming that the proper course of action at that time was for Telco to terminate Federated's service rather than giving him an unpublished number. Complainant alleges that, at the time unpublished service was provided to complainant, Telco was confronted with documented allegations of telephone harassment; that complainant was not informed of the alternative option of having Federated's telephone service discontinued, and, therefore he elected, against his wishes, to have his telephone number on an unpublished basis; that changing his number to unpublished status was not adequate to protect him from further harassing calls since Federated later made more calls to complainant at the place of his employment; and that the provision of unpublished service at his home was not an adequate substitute for the enforcement of federal law and Commission policies. Complainant also challenges Telco's June 25, 1971 assertions that if there were evidence of further continuous violations by Federated, Telco would follow established procedures by issuing another warning, and if not heeded, Telco would make a legal review of the matter and then terminate Federated's service. Complainant claims that there was a basis for terminating Federated's service on June 25, 1971, in that there were numerous repeated, harassing and abusive debt collection calls made by Federated to complainant's home from January 1970 through October, 1970 including the recorded call in October, 1970 that Telco admits was abusive. As to these particular calls complainant states that initially these calls were received once a week during the aforementioned period, but by the latter part of October, 1970 Federated was calling complainant every day; that on or about October 14, 1970 four calls were made in one evening and that complainant had recorded one of these conversations on tape; that such calls were made at odd hours of the day or night and to his wife and children; that such calls often threatened institution of legal proceedings and disparagement of credit; and that abusive and indecent terms were repeatedly used.

8. Finally, complainant claims that, even if service termination wasn't required earlier such action is required at the present time in view of the fact that Federated made several more harassing debt collection calls to complainant at complainant's place of employment after June 25, 1971, and that such calls constituted further violations requiring Telco to initiate its established procedures looking toward

termination of Federated's service. Complainant requests that the Commission investigate and make a determination that Federated committed the aforementioned violations; that we issue a show cause order why Telco should not initiate termination procedures against Federated; and that alternately we order hearings looking toward eventual termination of service.

9. In its responsive pleadings Telco denies that it is now, or that it has ever been, legally obligated to initiate termination procedures against Federated and alleges that its conduct has at all times been just and reasonable and, in all respects, in accordance with the law and Telco's tariffs. Telco asserts that complainant voluntarily requested unpublished service; that Telco did not receive notice of complainant's informal complaint until December 8, 1970, which was after unpublished service was provided on November 2, 1970; and that at the time it provided such unpublished service neither complainant nor his attorney had presented and documentary material or any other evidence to Telco of further harassing calls. As to the alleged calls made after June 25, 1971 to complainant's employer, Telco claims that termination of Federated's service was not required because of the disputed facts concerning such calls and lack of further evidence. Telco requests that we dismiss the complaint.

DISCUSSION

10. This formal complaint raises questions of substantial importance relating to our regulatory concern over the abusive or harassing use of telephone service for collection of actual or claimed debts. The primary question raised herein is whether Telco in this case fulfilled its obligation to take reasonable steps, including suspension or termination of Federated's telephone service, if necessary, to assure enforcement of its tariffs, as required by Section 203 of the Act and to assure non-discriminatory treatment of telephone subscribers as required by Section 202(a) of the Act. 47 U.S.C. 202–203.

11. In resolving the basic questions before us, we shall first consider whether Telco acted appropriately in providing unpublished service to complainant in November, 1970 as a means of preventing the receipt of harassing debt collection calls. No calls were received from Federated at complainant's home after unpublished service was provided. However, complainant had to pay an extra charge for such service and it was an inconvenience to him. Under these circumstances our view is that such unpublished telephone service was not an appropriate response to his complaint. As a general rule, we believe that the telephone company has an obligation to focus its preventive procedures upon the conduct of the allegedly abusive caller and, if at all possible, to avoid taking any measures which would cause the complaining customer the inconvenience and extra expense of unpublished home service. Moreover, it appears clear that such unpublished service generally will not protect an employed customer from further debt collection calls as it is reasonable to expect that a debt collection caller, unable to reach an individual at his home, will call complainant's place of employment. We do not mean to imply that a telephone company should not, under any circumstances, provide unpublished

service to a complaining customer as a partial or temporary means of ameliorating the effects of unlawful debt collection calls. What we do wish to stress, however, is that, in a case where there are valid complaints of abusive calls and it appears necessary or desirable to provide unpublished service, such service should be furnished only when the customer clearly requests it and when he is told that it is a temporary and partial measure and that he can shift back to published service at his election after the final resolution of his complaint. If provision of unpublished service to a home telephone is all that a telephone company is obligated to do in order to satisfy such a complaint, then there would be very little incentive for the telephone company to initiate corrective actions against abusive callers. Therefore, we are of the opinion that the provision of unpublished service to the complainant in this case (with its attendant increased costs, inconvenience and questionable effectiveness) was not an adequate response by Telco to this complaint.[1]

12. We must also consider whether Telco acted properly after it was on actual notice, in 1971, that an October, 1970 interstate telephone call from Federated was made that was clearly abusive and thus in violation of the tariffs. We attach hereto a written transcript of that call. This call was made "in a manner reasonably to be expected to frighten, abuse, torment or harass another." (Section 2.2.2 of AT&T's Tariff FCC No. 263) Telco listened to a recording of this call in June, 1971. However, according to Telco's formal answer, the action it took concerning this call was as follows:

> Defendant recognized the abusive nature of the call which had been recorded . . . and Defendant contacted the Credit Manager of Federated Credit Corporation and made that company aware of pertinent tariff provisions and the necessity that Federated Credit Corporation conform with such provision.

In view of the wording of this Telco statement, we wrote a letter to Telco on May 17, 1973 and requested full details as to how this alleged "contact" was made, when it was made, who made it and with whom, and specifically in what way and by what means was Federated made fully aware of the tariffs and the necessity to conform therewith. In Telco's letter of June 4, 1973 to us, it appears that, contrary to the implications in the above-quoted statement, no contact was made by Telco with Federated after Telco listened to the recording of the abusive call; that the above-quoted statement was intended to refer to the fact that a representative of Telco telephoned Federated's Credit Manager on or about March 23, *1971* (our italic) and reviewed the proper use of the service for debt collection purposes and emphasized that improper calling constituted a tariff violation. Thus, Telco has admitted that the statement in its Answer was not intended to indicate that contact was made with Federated's Credit Manager *after* Telco heard the recording of the abusive call. It is now clear that Telco relied entirely upon a prior contact with Federated but that after hearing the recording of the abusive call, Telco took no further steps whatsoever to require Federated to submit to Telco any explana-

[1] Upon the filing of an informal complaint, the Commission will give consideration to a request by Complainant for a refund of the difference between the published and unpublished charges by defendant during the period pertinent to this complaint.

tion of how or why this particular abusive call was made or what individual made it, or to submit to Telco any proof that Federated had taken positive and reasonably adequate steps to prevent such calls in the future either to complainant or to anyone else. We conclude that Telco, after listening to the recorded abusive call, should have promptly suspended Federated's service upon written notice and should have continued such suspension until such time as Federated submitted to Telco a full and adequate showing in writing that Federated would abide by the tariffs of Telco. Telco's failure to take such steps was a gross failure to enforce properly its tariffs prohibiting abusive calls.

13. Finally, we need to consider whether Telco acted properly in its examination and treatment of its own business toll records associated with Federated's account. Clearly, the best evidence in this case by which Telco could determine the frequency and number of calls being made to complainant by Federated was its own toll records. Telco's actions raise serious questions as to whether Telco failed to make a timely and adequate check of its business toll records upon receipt of the informal complaint herein and whether Telco erred in detroying certain business toll records that appeared to be material, relevant, and pertinent to the informal complaint. We served the initial informal complaint on Telco on or about December 8, 1970. On January 14, 1971, Telco advised it was investigating the matter. However, in its April 6, 1971 letter to us Telco stated that a review of the business toll records associated with Federated's account from October, 1970 through April 6, 1971 failed to disclose any calls by Federated to complainants home telephone number during that period and that records prior to October, 1970 had not been retained. Telco stated that the pre-October, 1970 records were destroyed pursuant to Telco's long-standing practice that records of toll calls are retained for only six months past in the regular course of its business and in accordance with applicable Commission Rules and Regulations. Inasmuch as a majority of the alleged abusive calls to complainant's home were made during the period January, 1970 through October, 1970, the materiality and relevance of any business toll records associated with Federated's account existing during such period should have been obvious to Telco upon receipt of the informal complaint in December, 1970. However, notwithstanding the fact that Telco had the informal complaint at that time and notwithstanding that, on January 14, 1971 Telco wrote us stating the matter was being investigated, it is clear from Telco's April 6, 1971 letter that Telco did not take any steps in December, 1970 or January, 1971 to preserve and ascertain the content of toll records existing prior to October, 1970. A prompt check of such toll records in December, 1970 would have covered the period for at least six months prior to December, 1970, i.e., June to December. We cannot emphasize too strongly that it is the duty of the carriers under our jurisdiction, upon being served by us with an informal or formal complaint, to examine promptly and preserve all records then in its possession that are relevant and material to a resolution of the questions raised by the complaint until such time as the complaint is resolved. Telco has failed in this duty and we conclude that, in this respect,

Telco did not take reasonable steps to assure the enforcement of its tariffs prohibiting abusive telephone calls.

14. In addition to the foregoing, Telco reveals in its responsive pleading to the formal complaint that the toll records from October, 1970 to April 6, 1971 were also destroyed. In our letter of May 17, 1973, to Telco, we questioned why this was done in view of the pendency of the unresolved informal complaint. In its June 4, 1973 letter Telco stated that the October, 1970 to April 6, 1971 toll records were destroyed because they revealed no calls by Federated to complainant and because Telco was told that the abusive calls had ceased when complainant changed to unpublished service in 1970. Telco further stated that its normal practice is to retain customer records for whatever period is necessary when such records are in any respect material, relevant or pertinent to judicial, administrative, or other proceedings. However, it is clear that Telco failed in this case to follow its normal practices. The toll records for the period October, 1970 to April 6, 1971 were material, relevant and pertinent to the pending informal complaint served on Telco by this Commission. It was the duty of Telco to retain these records until the complaint was resolved. This is particularly true since Telco claims that the toll records from October, 1970 to April, 1971 showed no calls from Federated to complainant notwithstanding that the abusive call recorded by complainant was made in October, 1970. This discrepancy has not been explained by Telco. We conclude therefore that Telco failed in its duty to take reasonable steps to assure enforcement of its tariffs by destroying the toll records for the period from October, 1970 to April, 1971 before resolution of the informal complaint herein.

15. To summarize the foregoing, we find and conclude that Telco failed to fulfill its obligations under the Act (a) by failing to investigate promptly and fully the informal complaint of Mr. Maller which we served upon Telco in December, 1970; (b) by destroying pertinent records of toll calls during the six-month period prior to December, 1970; (c) by providing unpublished service and relying thereon for satisfaction, in whole or in part, of the informal complaint; (d) by failing to take prompt action to assure compliance with the tariffs upon hearing the tape recording of the unlawfully abusive telephone call made in October, 1970 and (e) by destroying pertinent toll records after April, 1971 before there was final resolution of the informal complaint.

16. In the light of the foregoing findings and conclusions, the question properly before us is to determine what action, if any, we should require Telco to take at this time with respect to past violation of its tariffs by Federated. The undisputed evidence in this case is that at least one abusive call was made to complainant by Federated. Complainant alleges that there were more and we believe that the circumstantial evidence supports this contention. The relief requested by complainant is that we issue a show cause order as to why Telco should not forthwith terminate the service of Federated, or that we initiate formal hearings looking toward eventual termination of such service. We interpret this request to mean that complainant is seeking permanent termination of Federated's service for all time rather than any termination or suspension of service for a temporary period. We be-

lieve that any action by us looking toward permanent deprivation of all telephone service to Federated would be unwarranted. In our opinion, a customer who has been found by a carrier to be utilizing telephone service to make abusive debt collection calls should be afforded a reasonable opportunity to make a showing, if it can, that it has discontinued such unlawful use and has taken appropriate steps to assure that there will be no such unlawful use in the future, before such customer is permanently deprived of telephone service. We do not mean to say that the carrier should not suspend the service on a temporary basis upon learning of such unlawful usage. To the contrary, the proper procedure in any case where the carrier learns of such unlawful usage is for the carrier to suspend the service forthwith upon written notice explaining the reasons therefor and requiring the customer, as a condition to restoring service, to submit in writing to the carrier a full and complete showing that the customer has discontinued such unlawful practice and that appropriate steps have been taken to give reasonable assurance that such practices will not occur in the future. Upon such a showing, the carrier should restore service to the customer. If the customer is unable to make such a showing, the carrier would then be justified in continuing to deny service to such customer.

17. Finally, we shall address the question of whether the complainant violated the interstate tariffs of defendant in recording the October, 1970 call without the "beep tone" and, if so, whether it is appropriate for us to consider such recording, or a transcript thereof, as evidence herein.

18. In one of its pleadings Telco alleges that plaintiff's recording was in violation of the tariffs and that, prior to March, 1971, defendant discussed the substance of this requirement with complainant's attorney. However, in another pleading Telco states that it "denies that it sought to imply that the conversation recorded without a beep tone in violation of applicable tariffs would or would not be admissible as evidence in a hearing."

19. The "beep tone" requirements to which telephone users are subject are set forth in Section 2.6.4(D) of AT&T's Tariff F.C.C. No. 263. The pertinent text of these requirements is as follows:

> (1) Long distance message telecommunications service furnished by the Telephone Company is not represented as adapted to the recording of telephone conversations. However, customer-provided recording equipment may be used in connection with long distance message telecommunications service subject to the following conditions:
>
> * * * * * * *
>
> Connection of customer-provided voice recording equipment with facilities of the Telephone Company for the recording of two-way telephone conversations is permitted only by means of a direct electrical connection through a connecting arrangement furnished, installed and maintained by the Telephone Company, which contains a recorder tone device automatically producing a distinctive recorder tone that is repeated at intervals of approximately fifteen seconds * * *

20. Although Telco makes the bare allegation in its pleadings that complainant's action in making the recording without the "beep tone" was a tariff violation, we note that Telco did not invoke the procedures set forth in the tariffs that are required to be followed whenever a violation of the "beep tone" tariff requirements comes to the atten-

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tion of the carrier. These procedures are set forth in Section 2.6.7 of the AT&T's Tariff F.C.C. No. 263 and the full text thereof is as follows:

2.6.7 *Violation of Regulations*

Where any customer-provided equipment is used with long distance message telecommunications service in violation of any of the provisions in 2.6.1 through 2.6.6, the Telephone Company will take such immediate action as necessary for the protection of the network, and will promptly notify the customer of the violation. The customer shall discontinue such use of the equipment or correct the violation and shall confirm in writing to the Company within 10 days, following the receipt of written notice from the Company, that such use has ceased or that the violation has been corrected. Failure of the customer to discontinue such use or to correct the violation and to give the required written confirmation to the Telephone Company within the time stated above shall result in suspension of the customer's service until such time as the customer complies with the provisions of this tariff.

21. Thus, if Telco was of the view that complainant had violated the "beep tone" tariff requirements, Telco was obligated to take the steps set forth above in Section 2.6.7 and any failure on the part of Telco to do so would subject it to the monetary forfeitures prescribed in Section 203 of the Act, 47 U.S.C. 203. Defendant did not take steps, i.e., of providing the 10-day written notice to complainant or of requiring a written confirmation from complainant or of suspending service for failure to give written confirmation. Accordingly, Telco's position in this case on the question of whether or not the recording violated its tariffs appears to be somewhat ambivalent.

22. We are of the opinion that there was no tariff violation by complainant in recording this particular call without a "beep tone" and that Telco acted correctly in not invoking the procedures of Section 2.6.7 which aply to such violation. We are here dealing with a type of telephone call that is flatly forbidden by the tariffs of Telco and probably by Section 223 of the Act. More specifically, the interstate tariffs, which constitute defendant's offer of service to Federated and all other users and which set forth all of the terms and conditions of such offer, state (a) that the service is furnished "in accordance with the regulations" specified in the tariff; (b) that one of the regulations is that the service is furnished "subject to the conditions that *there will be no abuse or fraudulent use of the service*" (our italic); and (c) that the following types of calls constitute "abuse or fraudulent" use of that service:

(A) the use of service or facilities of the Telephone Company to transmit a message or to locate a person or otherwise to give or obtain information, without payment of the charge applicable for service;

(B) the obtaining, or attempting to obtain, or assisting another to obtain or to attempt to obtain, long distance message telecommunications service, by rearranging, tampering with, or making connection with any facilities of the Telephone Company, or by any trick, scheme, false representation, or false credit device, or by or through any other fraudulent means or device whatsoever, with intent to avoid the payment, in whole or in part, of the regular charge for such service;

(C) the use of service or facilities of the Telephone Company for a call or calls, anonymous or otherwise, if in a manner reasonably to be expected to frighten, abuse, torment, or harass another;

(D) the use of profane or obscene language;

(E) the use of the service in such a manner as to interfere unreasonably with the use of the service by one or more other customers.

All users are charged with the knowledge of these provisions and are presumed to accept them as a condition to obtaining the service offered by defendant.

23. Furthermore, Section 223 of the Act provides as follows:

> Whoever—(1) in the District of Columbia or in interstate or foreign communication by means of telephone—(A) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent; (B) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number; (C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or (D) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or
>
> (2) Knowingly permits any telephone under his control to be used for any purpose prohibited by this section, shall be fined not more than $500 or imprisoned not more than six months, or both. 47 U.S.C. 223

All users are also charged with the knowledge of these prohibitions in the use of defendant's service.

24. We would be concerned with the justness and reasonableness of any tariff filed with us that would have to be construed as requiring an innocent party to a call that is violative of either the "abuse or fraudulent" use prohibitions of the tariff or Section 223 of the Act, to transmit the "beep tone" in every case to the offending party before the call could be recorded by such innocent party. It would appear *prima facie* unreasonable to require a "beep tone" in a case, for example, of an anonymous caller making calls proscribed by the tariffs or Section 223 where a recording of such calls is desirable to identification or tracing or proof of content of the message but where the transmission of the "beep tone" would effectively thwart any such efforts. Moreover, as a practical matter, such recordings may often constitute the only reliable evidence upon which valid determination may be made by the carrier in carrying out its duty to enforce its tariffs or evidence upon which criminal convictions under Section 223 could be obtained. This is particularly important in cases such as the present complaint where business toll records were destroyed by the carrier that appear relevant and material to contentions that the tariff is being violated and that the carrier is not doing its duty, and where the parties give conflicting statements to the carrier as to the frequency, existence and nature of the calls.

25. We are of the opinion that the tariffs of Telco should be construed as imposing the "beep tone" requirements only with respect to telephone calls that are made in accordance with the fundamental terms of the service offering made to the public by the carrier; and that such requirements do not apply whenever a person, without the consent of the carrier and contrary to its published rules, takes control of the facilities of the carrier and uses such facilities to obtain a communication service that is outside the scope of the service actually offered to the public by the carrier. Furthermore, we believe that any person who makes a call that is clearly prohibited by the tariffs or by some statutory provision such as Section 223 of the Act, should be considered as waiving any rights he may have under the tariffs to receive the "beep tone" warning of the recordation of any such prohibited call. For these reasons, we conclude that complainant did not violate defendant's tariffs as we construed them herein.

26. We recognize that the presently effective tariffs do not contain express language that unambiguously provides for the foregoing exemptions from the "beep tone" requirements and we believe that AT&T should make appropriate revisions in the tariffs to allow therefor. Accordingly, we are directing the Chief, Common Carrier Bureau, to institute informal proceedings with AT&T to obtain such revisions.

27. As to whether we may use complainant's recording as evidence herein, we think it is clear that we may do so. Even if we had found that the recording was in violation of the "beep tone" tariff requirement we could, under the rules of evidence evolved in the Federal Courts, consider the recording for the purposes of this case. *Ferguson* v. *U.S.* 307 F. 2d 787 (10th Cir. 1962), opinion withdrawn on other grounds 329 F. 2d 923 (1964); *Battaglia* v. *U.S.* 349 F. 2d 556 (9th Cir. 1965) *cert. denied* 382 U.S. 955 (1965).

28. In view of the foregoing and in consideration of the fact that this is a case of first impression, IT IS ORDERED, That Telco shall, within 30 days from the release date hereof, obtain a full and complete written showing from Federated that Federated has discontinued the practices evidenced by the October, 1970 abusive telephone call and that Federated has taken reasonable steps to assure that abusive calls will not be made in the future by Federated to any person; and that within 10 days after receipt of such statement from Federated, Telco shall certify in writing to the Commission that Federated is in compliance with Telco's tariff schedules or that Telco has suspended interstate and foreign service for failure of such compliance.

29. This action shall serve as notice to other carriers and to other debt collection users of the interstate telephone network that we will expect all carriers to suspend service in the manner set forth above whenever there is unlawful use of the telephone for debt collection purposes and that failure to do so will subject such carriers to the penalties and forfeitures prescribed by the Act.

30. IT IS FURTHER ORDERED, That complainant's request for relief IS GRANTED to the extent indicated above and IS OTHERWISE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

TRANSCRIPT OF TAPE RECORDED TELEPHONE CONVERSATION BETWEEN RICHARD MALLER OF WESTBROOK, MAINE, AND EMPLOYEE OF FEDERATED CREDIT CORPORATION OF READING, MASS., IN OCTOBER 1970

[NOTE.—The first portion of the telephone conversation was not recorded. At times the conversation was inaudible.]

* * *

MALLER: . . . how do I know?
CREDIT: [inaudible] . . . and you're telling me where to go? I'll buy and sell you guys.
MALLER: What's your name?
CREDIT: You've got it, Adam. What, are you deaf too?
MALLER: Who do you work for?
CREDIT: Oh, you gotta be kidding.
MALLER: No, I ain't kidding.
CREDIT: You got a cement block in between your ears.
MALLER: Who do you work for?
CREDIT: [986 98]
MALLER: Who do you work for?

CREDIT: Well who the hell do you think I work for?
MALLER: Would you mind telling me?
CREDIT: [Bene]ficial Finance.
MALLER: Who?
CREDIT: Idiot.
MALLER: *Who* do you work for?
CREDIT: I work for the Federated Credit Corporation. Okay? Write it down so you can write it in to your lawyer and maybe we can talk sense into your lawyers.
MALLER: Well I hope you can, buddy.
CREDIT: You haven't even got a dime to pay—uh—to go to a lawyer. Who the hell are you kidding?
MALLER: I don't need—I don't need a dime. I can go to legal aid.
CREDIT: Legal aid. Well, maybe they'll pay your bills for you, too.
MALLER: No, they won't pay my bills for me.
CREDIT: Somebody's gotta pay them. You might as well go down to court . . . and mail it.
MALLER: Look, do you realize that I have a wife . . .
CREDIT: [Overlap] . . . when he gets paid when they take out so much . . .
MALLER: I have a wife that's under psychiatric treatment and has been that way for 3 years and if you make her any worse, buddy, you *are* in trouble.
CREDIT: When are you gonna pay the bill? You gotta . . .
MALLER: Do you understand that?
CREDIT: When are you gonna mail it?
MALLER: I'm threatening *you* now.
CREDIT: You're threatening me.
MALLER: If you put her over the brink, you will have had it, and believe me, I know this.
CREDIT: Don't give me that baloney; you owe us the money and when are you gonna mail it?
MALLER: Do you understand?
CREDIT: When are you gonna mail it?
MALLER: Do you understand what I said?
CREDIT: Nobody will listen to you. I wanta know when I'm gonna get my money.
MALLER: She was under psychiatric treatment and if you want to talk to the psychiatrist . . .
CREDIT: Who needs a . . . you're the one that needs a psychiatrist.
MALLER: Not me, mister. *You* do.
CREDIT: Mail in your money and you won't get another phone call.
MALLER: Any time you want the books, they're right here waitin' for you.
CREDIT: Yeah. Listen, when are you gonna mail the money? If you mail the money in we won't have to call you and won't have to go through the hassle . . .
MALLER: I will mail the money when I get it, and until I get it I will not mail it and I don't care how many times you call or how many times you write.
CREDIT: [Overlap] . . . six months to dig in your pockets to mail us some dough. Big man!
MALLER: Do you understand?
CREDIT: Real big man.
MALLER: Well, if you had my problems you'd see how big you are.
CREDIT: What's that?
MALLER: You'd probably be in Augusta if you had my problems.
CREDIT: I'd be in Augusta?
MALLER: Yeah.
CREDIT: That's your problem.
MALLER: Yeah, with my problems.
CREDIT: When are you gonna mail the dough in. I'll get off your back.
MALLER: I have a retarded son that I'm trying to keep alive and a wife I'm trying to keep alive and, buddy, I bet you couldn't even stand anything like that.
CREDIT: When are you gonna mail in the dough?
MALLER: I will not mail it in until I get it.
CREDIT: When are you gonna get it?
MALLER: I do not know.
CREDIT: What do you mean you don't know?

MALLER: I make below 90 bucks a week and most of that goes on medicine.
CREDIT: Aw, don't gimme that crap, will ya?
MALLER: You wanta, you wanta come down?
CREDIT: [Inaudible] . . . bull shit . . . that's just . . .
MALLER: Are you up in Reading, Mass.?
CREDIT: Who the hell are you kidding?
MALLER: Are you in Reading, Mass.?
CREDIT: I'm in Reading, Mass.
MALLER: All right, why don't you drive down here tomorrow?
CREDIT: What do you mean, drive down? Why don't you . . .
MALLER: It'll take you an hour and—uh—an hour at the most to get here.
CREDIT: Yeah.
MALLER: Would you mind?
CREDIT: Will you have a check ready for me?
MALLER: No, I will not have a check ready, but I'll let you, I'll sit down and go over my finances with you.
CREDIT: No man, I got my own problems. See, I don't have to listen to yours.
MALLER: If you're man enough, why don't you come down and sit down and talk it over with me?
CREDIT: [Overlap] . . . 75 bucks and I'll get off your back. It's as easy as that. Now dig down and pay us 5 bucks and we're off your back for a few months.
MALLER: Look, I'm no longer gonna talk to ya. You don't wanta talk sense so I'll see ya.
CREDIT: Listen to reason . . .
MALLER: Good-bye. Good-bye.
CREDIT: Listen to reason . . .

F.C.C. 73-1278

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification Concerning Stay Order in Docket No. 18179 Relating to Non-network Program Arrangements

DECEMBER 6, 1973.

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

NOTIFICATION CONCERNING STAY ORDER IN DOCKET NO. 18179 RELATING TO NONNETWORK PROGRAM ARRANGEMENTS

In the First Report and Order in Docket No. 18179 (FCC 73-806, issued August 31, 1973), the Commission adopted new Section 73.658 (m) of the Commission's Rules. Section 73.658(m), as adopted, provides that a television station cannot, on or after August 7, 1973, enter into a non-network program arrangement which prevents another television station located in a community over 25 miles away (as determined by reference points contained in Section 76.53 of the Commission's Rules) from broadcasting such non-network programs. The effective date of this new rule was September 7, 1973.

On August 31, 1973, the Commission issued a Memorandum Opinion and Order (FCC 73-890) pursuant to requests for stay by the Association of Maximum Service Telecasters (AMST), National Association of Broadcasters (NAB), and several television licensees which stayed the effective date of Section 73.658(m) until November 12, 1973, to enable the Commission to consider petitions for reconsideration that would be filed. This stay provided that should the rule not be modified on reconsideration, the August 7, 1973, date contained in the rule would still obtain.

Thirty petitions for reconsideration were filed by AMST, NAB, television licensees and program suppliers. All but one requested rescission or modification of Section 73.658(m). Several parties requested a further extension of the stay. In extending the stay, the Commission set forth its reasoning which is contained in paragraph 4 of a Memorandum Opinion and Order issued November 9, 1973, which reads as follows:

> The simple but unanticipated fact is that the range and complexity of the points contained in the pleadings is such that far more time than expected will be required for a considered resolution of the issues. As a result, a further stay is necessary. Since the amount of time which will be required cannot presently be judged, we think it preferable to stay the rule indefinitely, rather than set a date certain not knowing if it will be possible to meet that deadline. In the meantime, we are not now making a change in the intent of the original stay Order

which indicated that should the rule not be modified after reconsideration, all contracts finalized on or after August 7, 1973, would be subject to the new rule. However, we are not foreclosing some change in our view on this point as a result of changed circumstances, particularly the delay in concluding our action in this proceeding.

The purpose of this Public Notice is to inform all parties to the proceeding that the staff of the Commission is actively studying the petitions for reconsideration and the Commission contemplates the adoption of a final order by mid-January, 1974. Whereas, the Commission's order of November 9, 1973, stated that we were not foreclosing some change in our view, it was not our intent to indicate that the rule amendment adopted July 26, 1973 (published August 7, 1973, in the Federal Register, 38 Fed. Reg. 21268), would be either modified or rescinded.

F.C.C. 73-1256

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
PACIFIC AND SOUTHERN CO., INC., ATLANTA, GA.
Concerning Operation of Station KKDU (FM), Los Angeles, Calif.

NOVEMBER 28, 1973.

Mr. JOHN S. TYLER,
Pacific and Southern Co., Inc.,
c/o Station WQXI-TV,
1611 West Peachtree St.,
Atlanta, Ga. 30309

DEAR MR. TYLER: This is with reference to the Commission's investigation into the operation of Station KKDJ (FM), Los Angeles, California. The investigation disclosed that the station started broadcasting a contest called the "KKDJ Music Call" on March 26, 1973. On April 18, 1973, Robert E. Deckman revealed to Edward R. Boyd, General Manager of KKDJ (FM), that the outcome of the contest had been prearranged on April 12 so that Mr. Deckman would win the prize, although Mr. Deckman did not claim the prize. While the investigation produced no evidence that anyone employed by the station had any part in actually prearranging the outcome of the contest, it disclosed a lack of proper procedures or controls regarding the operation of the contest. Specifically, no effective procedures were established to guarantee the confidentiality of the list of names to be called after those names were selected by a station employee. The evidence indicates that the list of names to be called was attached to the program log for the following day (or several days when over a weekend) and left on top of a desk in full view of anyone using the KKDJ (FM) offices. Thus it appears that various members of the station staff, or anyone entering that particular office where the log was maintained, could have prearranged the outcome of the contest on any day, in violation of Section 509 of the Communications Act of 1934, as amended; which, as the evidence indicates, is what happened on April 12, 1973. Further, it appears that subsequent to the prearrangement of the outcome of the contest, a person then employed by KKDJ (FM), with knowledge of the scheme, attempted to persuade Deckman to accept the prizes and refrain from disclosing the scheme to station management.

Thus, it appears that in your failure to establish proper procedures and exercise reasonable diligence in the supervision of the "KKDJ Music Call" contest, you have failed to exercise the degree of responsibility expected of a licensee.

You are reminded that you will be expected to take all reasonable precautions to minimize the possibility of violations of Section 509

of the Communications Act of 1934, as amended, in connection with the broadcast of future contests. In this connection, the Commission takes cognizance of your reply of July 23, 1973, wherein you state that in the future, no employee discretion will be involved in the selection of winners and the names of the persons to be called will be placed under lock and key until the call is to be made.

This matter is being made part of the permanent file for Station KKDJ(FM) for consideration in connection with future operations of the station.

Commissioner Johnson dissenting.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

F.C.C. 73-1347

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
JOHN A. POPPE, RECEIVER FOR WMER, INC.,
ST. MARY'S, OHIO
Concerning Designation of Application for Assignment of Station WMER-FM for Hearing as to Qualifications of Proposed Assignee

DECEMBER 19, 1973.

JOHN A. POPPE, ESQUIRE,
Receiver for WMER, Inc.,
138½ East Spring St.,
St. Mary's, Ohio 45402

Dr. DAVID M. SPENCER,
President, Grand Lake St. Mary's Broadcasting Corp.,
128½ West Fayette St.,
Celina, Ohio 45822

GENTLEMEN: This is with reference to the application (BALH-1893, BASCA-594) for assignment of Radio Station WMER(FM), Celina, Ohio, from yourself, as Receiver for WMER, Inc., to Grand Lake St. Mary's Broadcasting Corp., accepted for filing with the Commission on September 26, 1973. The application is currently being processed in the Broadcast Bureau.

That application states that William M. Hildebrand will acquire a 50% ownership interest in the proposed licensee. His son, Scott Hildebrand, will serve as a Director and as General Manager. It is further stated that Scott Hildebrand, also known as Scott Allen, served as General Manager of WMER(FM) from February, 1971, until August 11, 1973.

During the period of Scott Hildebrand's tenure as General Manager, the Commission experienced numerous problems with the operation of WMER(FM), to wit:

1. Form 324 (Annual Financial Report of Networks and Licensees of Broadcast Stations) for 1970, due April 1, 1971, has not been received.
2. Form 324 for 1971, due April 1, 1972, has not been received.
3. Form 324 for 1972, due April 1, 1973, has not been received.
4. The annual license fee, due October 1, 1970, had not been paid on March 5, 1971, when a letter so informing licensee was sent.
5. That fee was still outstanding when a second letter was sent on July 13, 1971.

6. An inspection of WMER(FM) on February 5, 1973, resulted in an Official Notice of Violation, mailed on March 2, 1973, listing 24 separate violations of Part 73 of the Commission's Rules.

7. No response to this Notice was received during Scott Hildebrand's tenure as General Manager, or thereafter.

8. A subsequent Official Notice of Violation, mailed on April 5, 1973, concerning operation of WMER(FM) by an unlicensed operator, has also not been answered.

Inasmuch as the above raise substantial questions concerning the ability or desire of Scott Hildebrand to operate a broadcast facility in compliance with the Commission's Rules, and inasmuch as William Hildebrand, a veterinary doctor without experience in broadcasting, may defer to his son's judgment in broadcast matters, it is the Commission's determination that this application must be designated for hearing on the qualifications of the proposed assignee to serve as licensee of a broadcast station.

Please communicate to the Secretary, within twenty days, whether it is your intention to prosecute the application through the hearing process. A failure to respond, within the time designated, will be deemed to be a determination on your part not to prosecute this application further.

By Direction of the Commission,
Vincent J. Mullins, *Secretary*.

F.C.C. 73-1343

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of SLEEPY EYE CATV, INC., SANBORN, MINN. For Certificate of Compliance	CAC-2681 MN086

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released January 4, 1974)

BY THE COMMISSION:

1. Sleepy Eye CATV, Inc., has filed an application for certificate of compliance to begin cable television service at Sanborn, Minnesota, a community located outside of all television markets. Sleepy Eye proposes to carry the following television broadcast signals:

KEYC-TV (CBS, Channel 12), Mankato, Minnesota.
WCCO-TV (CBS, Channel 4), Minneapolis, Minnesota.
KMSP-TV (ABC, Channel 9), Minneapolis, Minnesota.
WTCN-TV (Ind., Channel 11), Minneapolis, Minnesota.
KSTP-TV (NBC, Channel 5), Minneapolis, Minnesota.
KTCA-TV (Educ., Channel 2), Minneapolis, Minnesota.
KELO-TV (CBS, Channel 11), Sioux Falls, South Dakota.
KSOO-TV (NBC, Channel 13), Sioux Falls, South Dakota.

Carriage of these signals is consistent with Section 76.57 of the Commission's Rules and Sleepy Eye's franchise, granted April 25, 1973, conforms with the requirements of Section 76.31.

2. Station KEYC-TV, a CBS affiliate, places a predicted Grade B contour over Sanborn. Pursuant to Section 76.91 of the Rules, KEYC-TV has requested Sleepy Eye to provide network program exclusivity against other CBS affiliates that have lower priority. Sleepy Eye has requested a waiver of the provisions of Section 76.91 of the Rules, stating that: (a) the total population of Sanborn is approximately 500 people; (b) the total number of subscribers will not exceed 120; and (c) the Commission has had a long-standing policy of deferring action on exclusivity requests involving systems with fewer than 500 subscribers.

3. As we stated in *Parsen Electric Co.*, FCC 73-120, 39 FCC 2d 491 (1973), one of the policies retained in the *Cable Television Report and Order*[1] was the waiver of immediate imposition of program exclusivity requirements upon systems which had yet to obtain 500 subscribers. *See also Stark County Communications, Inc.*, FCC 73-103, 39 FCC 2d 274 (1973). In light of our past policy and the facts presented in this case, we believe that the public interest will be served

[1] Par. 98, *Cable Television Report and Order*, FCC 72-108, 36 FCC 2d 143, 181 (1972).

if a temporary waiver is granted to the applicant's system until 500 subscribers are served.

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

Accordingly, IT IS ORDERED, That the request for waiver of Section 76.91 of the Rules, filed by Sleepy Eye CATV, Inc., IS GRANTED to the extent indicated in paragraph three above.

IT IS FURTHER ORDERED, That the "Application for Certificate of Compliance" (CAC–2681), filed by Sleepy Eye CATV, Inc., IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1331

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTHERN BELL TELEPHONE & TELEGRAPH CO.	Docket No. 19903 File No. 398-M-L-120
AUTOPHONE OF GAINESVILLE, INC. For a Public Coast Class III-B Radiotelephone Station To Serve the Lake Sidney Lanier, Ga., Area	Docket No. 19904 File No. 520-M-L-111

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released December 27, 1973)

BY THE COMMISSION:

1. The above-captioned applications seek authority for a new Class III-B Public Coast station to be located in the vicinity of Cummings, Georgia. This class of station provides a ship-shore radiotelephone common carrier service, primarily of a local character, on VHF channels. The applicants seek authority to serve the Lake Sidney Lanier, Georgia area.

2. Southern Bell Telephone and Telegraph Company (hereinafter called Southern Bell) presently operates a Public Coast II-B station (call sign WAN) which serves the Lake Sidney Lanier, Georgia area on the frequency 2540 kHz and has now filed an application to provide service in the very high frequency band (Class III-B service) in addition to its Class II-B service. The Autophone of Gainesville, Inc. (hereinafter called Autophone) has filed an application for new Class III-B facilities to serve the same area.

3. Southern Bell, as licensee of station WAN, has urged a grant of its application without regard to the application of Autophone based on the Commission policy enunciated in paragraph 45 of its First Report and Order in Docket No. 18207 (23 F.C.C. 2d 553) which provided, in effect, preferential status to applications by licensees of Class II stations for VHF authority as against other applications for VHF authority in the same area. This policy was modified by the Commission in its Report and Order in Docket No. 19719, released July 12, 1973, which, among other things, deleted the requirement that Class II-B stations also provide Class III-B service by January 1, 1977, thereby eliminating any preferential status to Class II-B licensees as against other new applications for Class III-B service in the same area. The Commission further stated that the new rules in Docket No. 19719 would be applicable to all pending applications on file and, therefore, the subject applications are of equal status.

4. The Commission's rules do not authorize the establishment of two new VHF stations of this class to serve the same geographical area. It is evident from an analysis of the applications that 100% overlap in service area would exist if both applications were granted. Therefore, the applications are mutually exclusive and a hearing is needed to determine which of the applications should be granted.

5. Except for the issues otherwise specified herein, the applicants are qualified to become licensees of the Commission. The Safety and Special Radio Services Bureau and the Common Carrier Bureau of the Federal Communications Commission are parties to this proceeding.

6. Accordingly, IT IS ORDERED, that the above-entitled applications of Southern Bell and Autophone of Gainesville, Inc., ARE DESIGNATED for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order on the following issues:

a. To determine comparatively which applicant will provide the public with the better public coast station service based on the following considerations:

(1) coverage area and its relation to the greatest number of potential users;

(2) hours of operations;

(3) qualifications of management, operators, and other personnel;

(4) interconnection with landline facilities;

(5) proposed rates and charges;

(6) reliability and efficiency of service; and

(7) ability to provide radio communications assistance to vessels in distress.

b. To determine in light of the evidence adduced on all the foregoing issues, which application should be granted.

7. IT IS FURTHER ORDERED, That the burden of proof and the burden of proceeding with the introduction of evidence on Issue (a) is placed on each applicant insofar as the respective items pertain to each of these parties. Issue (b) is conclusory.

8. IT IS FURTHER ORDERED, That coverage areas will be computed on the basis of the criteria shown in Subpart R of Part 81 of the Commission's rules.

9. IT IS FURTHER ORDERED, That to avail themselves of an opportunity to be heard, Southern Bell and Autophone of Gainesville, Inc., pursuant to Section 1.221(c) of the rules, in person or by attorney, shall within twenty days of the mailing of this Order, file with the Commission in triplicate a written appearance stating its intention to appear on the date set for hearing and present evidence on the issues specified in this Order.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1305

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTHERN VIDEO CORP., CARBONDALE, ILL.	CAC-1121 IL166
MARION CABLEVISION, INC., MARION, ILL. For Certificates of Compliance	CAC-1122 IL128

MEMORANDUM OPINION AND ORDER

(Adopted December 12, 1973; Released December 28, 1973)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT.

1. Southern Video Corporation operates a 2,263-subscriber cable television system at Carbondale, Illinois, and Marion Cablevision, Inc.,[1] operates a 2,825-subscriber cable television system at Marion, Illinois. Both systems are located within the Cape Girardeau, Missouri-Paducah, Kentucky-Harrisburg, Illinois, television market (#69) and currently provide their subscribers with the following television broadcast signals:[2]

KFVS-TV (CBS, Channel 12), Cape Girardeau, Missouri.
WPSD-TV (NBC, Channel 6), Paducah, Kentucky.
WDXR-TV (Ind., Channel 29), Paducah, Kentucky.
WSIL-TV (ABC, Channel 3), Harrisburg, Illinois.
WSIU-TV (Educ., Channel 8), Carbondale, Illinois.
KMOX-TV (CBS, Channel 4), St. Louis, Missouri.
KPLR-TV (Ind., Channel 11), St. Louis, Missouri.
KSD-TV (NBC, Channel 5), St. Louis, Missouri.
KTVI (ABC, Channel 2), St. Louis, Missouri.
WEHT (CBS, Channel 25), Evansville, Indiana.
WTVW (ABC, Channel 7), Evansville, Indiana.

In addition, Southern Video provides its subscribers with the broadcast signals of WFIE-TV (NBC, Channel 14), Evansville, Indiana,

[1] The name of the system was changed in 1973 from Egyptian Cablevision, Inc., to Marion Cablevision, Inc.

[2] The community of Carbondale has a population of 22,816. The cable system commenced operations in September, 1971, and currently has 20 channels available for carriage of broadcast signals and access services. Twelve of these channels are used for television signal carriage, one is a time and weather channel with background music, and one is a nonautomated local origination (news, public affairs) channel. The community of Marion has a population of 11,724. The cable system commenced operations in June, 1971, and currently has 12 channels available for carriage of broadcast signals and access services. Of these channels, 11 are used for television signal carriage and one for automated program origination (a time-weather channel).

104-021—74——8

while Marion Cablevision is authorized to provide WFIE–TV.[3] On August 30, 1972, Southern Video Corporation and Marion Cablevision filed applications for certificates of compliance requesting certification of their proposals to add the following distant independent signal to their systems:

KDNL–TV (Ind., Channel 30), St. Louis, Missouri.

2. In its opposition to these applications filed on October 30, 1972, Turner-Farrar Association, licensee of Station WSIL–TV, Harrisburg, Illinois, states that since both the Southern Video Corporation and Marion Cablevision systems are located within the 69th market, they are, pursuant to Section 76.63 of the Commission's Rules, entitled to carry only two independent stations. Accordingly, the request to carry a third independent signal should be denied.

3. Sections 76.63(a) and 76.61(b)(2) of the Rules provide that systems located in one of the second fifty major television markets may carry a minimum complement of three full network stations and two independent stations. When the system fulfills its minimum complement, the Rules permit the system to carry two additional distant independent broadcast stations as bonus signals. In *Cable TV Company of York*, FCC 73–459, 40 FCC 2d 297 (1973), we explained that if a cable system was unable to satisfy its complement with a market or significantly viewed signal, a distant independent signal could be imported to provide the service complement. The system then would have to count this signal against the specified number of bonus signals.

4. Turning to the specifics of Turner-Farrar's objections, we note that WDXR–TV (Ind.), Paducah, Kentucky, is a market signal. KPLR–TV (Ind.), St. Louis, Missouri, is a distant signal provided by both systems. The defined level of service is satisfied by the carriage of these signals. Subtracting KPLR–TV from the alloted number of bonus signals, Southern Video Corporation and Marion Cablevision are entitled to carry one bonus signal. In compliance with our Rules, they have chosen KDNL–TV, St. Louis, Missouri, a distant independent signal, from the closest top 25 television market.

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 "Objections of Turner-Farrar Association" filed October 30, 1972, ARE DENIED.

IT IS FURTHER ORDERED, That the Applications for Certification (CAC–1121, 1122) filed by Southern Video Corporation and Marion Cablevision, Inc., ARE GRANTED, and the appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[3] In *Paducah Newspapers, Inc.*, v. *F.C.C.*, 414 F. 2d 1183 (D.C. Cir., 1969), the Court affirmed the Commission's waiver of former Section 74.1107 of the Rules and its authorization of carriage of this broadcast signal by both systems, but such carriage by Marion Cablevision did not commence prior to March 31, 1972. Marion Cablevision has indicated that it will carry WFIE–TV when KSD–TV is blacked out because of the network program exclusivity rules. In addition, the distant signal of Television Broadcast Station WTVW will be deleted from the Marion system if its proposal to carry Station KDNL–TV is approved. Upon addition of KDNL–TV, each system will designate one of its origination channels as a public access cablecasting channel.

F.C.C. 73-1339

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of TELEPROMPTER OF GREENWOOD, INC., GREENWOOD, S.C. For Certificate of Compliance	CAC-14 SCO24

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released January 4, 1974)

BY THE COMMISSION:

1. TelePrompTer of Greenwood, Inc., operates a cable television system in Greenwood, South Carolina, a community located in the Greenville-Anderson-Spartanburg, South Carolina-Ashland, North Carolina, television market (No. 46).[1] The system now provides its subscribers with the following television signals:

WOLO-TV (ABC, Channel 25), Columbia, South Carolina.
WIS-TV (NBC, Channel 10), Columbia, South Carolina.
WFBC-TV (NBC, Channel 4), Greenville, South Carolina.
WSPA-TV (CBS, Channel 7), Spartanburg, South Carolina.
WLOS-TV (ABC, Channel 13), Ashville, North Carolina.
WNTV (Educ., Channel 29), Greenville, South Carolina.
WJBF (ABC, Channel 6), Augusta, Georgia.
WRDW-TV (CBS/NBC, Channel 12), Augusta, Georgia.
WBTV (CBS, Channel 3), Charlotte, North Carolina.

In its application, TelePrompTer requests certification to add the following television signals:

WCES (Educ., Channel 20), Wrens, Georgia.
WRET (Ind., Channel 36), Charlotte, North Carolina.
WTCG (Ind., Channel 17), Atlanta, Georgia.
WGGS-TV (Ind., Channel 16), Greenville, South Carolina.

The application is opposed by Multimedia, Inc., licensee of WFBC-TV, Greenville, South Carolina, and Spartan Radiocasting Company, licensee of WSPA-TV, Spartanburg, South Carolina, and TelePrompTer has replied.[2] Carriage of the proposed signals is consistent with Sections 76.61 and 76.65 of the Commission's Rules. Moreover, TelePrompTer has assured us that it will expand its 12-channel capacity system in order to accommodate the requested additional signals as well as the access channels required by Section 76.251 of the Rules.

2. In their oppositions, Multimedia and Spartan argue that Tele-

[1] Greenwood has a population of 21,069, and TelePrompTer was serving 2,376 subscribers as of July 20, 1973. The cable system commenced operations in September, 1967, and currently has 12 channels available for carriage of broadcast and access services. Of these channels, nine are used for television signal carriage, one for automated program originations, and one (shared) for non-automated program originations.

[2] By amendment filed February 21, 1973, TelePrompTer withdrew its proposal to carry WRIP (Ind., Channel 6), Chattanooga, Tennessee. Accordingly, oppositions filed by Multimedia and Spartan directed against carriage of this signal are hereby dismissed as moot.

PrompTer's franchise, granted by ordinance on March 20, 1967, expired on March 20, 1972, and was not renewed until after March 31, 1972. Therefore, they submit, TelePrompTer must make a showing that its franchise is in strict compliance with Section 76.31 of the Rules.

3. In its reply, TelePrompTer, joined by the City Attorney of Greenwood, asserts that under South Carolina law, the 1967 franchising ordinance was of a continuing nature; that the franchise was to expire or terminate only upon some affirmative action taken by the City Council after the expiration of the specified five-year period; and that the ordinance finally approved in June, 1972, was merely an action to renew and continue the 1967 franchise as amended. Moreover, TelePrompTer submits a sworn affidavit from the mayor and other members of the City Council of Greenwood in which they state that it was the Council's intention to renew the 1967 franchise for a period of five years at its February, 1972, meeting and that the delay until June 19, 1972, was due to consideration of amendments but did not affect the action taken at the February, 1972, meeting. TelePrompTer submits minutes of the June 19, 1972, meeting which show that matters discussed at that meeting related to amendments which dealt with changing the grantee's name from TelePromptTer Cable Television to TelePrompTer of Greenwood, Inc., and permitting an installation fee of $7.50, and further show that the franchise issued on that date was granted retroactive to March 27, 1972. In light of all of the above, the Commission concludes that TelePrompTer is operating pursuant to a franchise granted prior to March 31, 1972, and therefore, no franchise showing need be made in this application. We note, of course, that when a new or renewed franchise is awarded covering the period commencing March 27, 1977 (or if such a franchise becomes effective earlier), full compliance with our Rules will be required.[3]

Accordingly, IT IS ORDERED, That the "Opposition to Application for Certificate of Compliance" filed by Multimedia, Inc., licensee of Television Station WFBC–TV, Greenville, South Carolina, on May 12, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the "Objection Pursuant to Section 76.17" filed by Spartan Radiocasting Company, licensee of Television Station WSPA–TV, Spartanburg, South Carolina, on May 12, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the application for certificate of compliance (CAC–14), filed by TelePrompTer of Greenwood, Inc., IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[3] Spartan also contends that no certificate of compliance should issue without TelePrompTer having made an unequivocal commitment to comply with the syndicated program exclusivity and network exclusivity requirements. We assume, in light of TelePrompTer's pleadings, that it will, upon proper request, abide by our exclusivity rules. Neither objecting party has suggested that this will not be the case, and no special commitment by TelePrompTer is necessary. *Columbus Communications Corporation*, FCC 72–1188, 38 FCC 2d 875 (1972); *Broken Arrow Cable Television*, FCC 72–1105, 38 FCC 2d 503 (1972); *Ceres Cable Company*, FCC 73–188, 39 FCC 2d 686 (1973).

F.C.C. 73-1297

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of TRANSPORTATION MICROWAVE CORP. For Licenses in the Point-to-Point Microwave Radio Service, for Stations at Tonawanda, N.Y., Philadelphia, Pa., and 27 Intermediate Points	Files Nos. 930/946-C1-P/L-74; 948/954-C1-P/L-74

ORDER

(Adopted December 12, 1973; Released December 17, 1973)

BY THE COMMISSION: COMMISSIONER REID DISSENTING ON THE DELEGATIONS.

1. The Commission has before it the above captioned applications of Transportation Microwave Corporation (TMC) which were filed on August 20, 1973 and August 27, 1973. These applications are unopposed.

2. In the captioned applications, TMC seeks common carrier authorization for an existing microwave system between Tonawanda, New York, and Philadelphia, Pennsylvania, and various intermediate cities. The common carrier service proposed is essentially private line for the transmission of voice and data communications. TMC values these facilities at some $3.2 million, including multiplex to provide the following channels:

	Number of 4 KHz channels
Tonawanda, N.Y.—Philadelphia, Pa	63
Tonawanda, N.Y.—Trenton, N.J	6
Tonawanda, N.Y.—Jersey City, N.J	58
Rochester, N.Y.—Philadelphia, Pa	16
Rochester, N.Y.—Trenton, N.J	5
Rochester, N.Y.—Jersey City, N.J	15
Syracuse, N.Y.—Philadelphia, Pa	18
Syracuse, N.Y.—Trenton, N.J	4
Syracuse, N.Y.—Jersey City, N.J	12
Utica, N.Y.—Philadelphia, Pa	12
Utica, N.Y.—Trenton, N.J	3
Utica, N.Y.—Jersey City, N.J	12
Albany, N.Y.—Philadelphia, Pa	12
Albany, N.Y.—Trenton, N.J	3
Albany, N.Y.—Jersey City, N.J	18
Jersey City, N.J.—Philadelphia, Pa	42
Trenton, N.J.—Philadelphia, Pa	14

3. This microwave system is currently in operation as licensed to Preston Trucking Company, Inc. in the Motor Carrier Radio Service. Pursuant to a request by TMC, the Commission released a *Memorandum Opinion and Order* in Docket No. 19309 on July 31, 1973 (42 FCC 2d 245), indicating a willingness to allow TMC to convert these facili-

ties to common carrier licensing and to allow TMC to use Motor Carrier Radio Service frequencies for a five-year period. Pursuant to the *Memorandum Opinion and Order*, TMC filed the captioned applications together with an agreement from Preston Trucking to surrender its licenses upon authorization of TMC. Under that agreement TMC will assume all existing contracts and commitments for service to the extent they are consistent with the tariff to be filed.

4. In view of the foregoing, it is found that the licensing of the instant facilities as common carrier would serve the public interest, convenience and necessity, and that TMC is technically, financially and otherwise qualified to operate them for the provision of interstate service. Intrastate service may be rendered pursuant to any necessary state authorization.

5. Accordingly, IT IS HEREBY ORDERED that the captioned applications ARE GRANTED, subject to the condition that Preston Trucking Company, Inc., surrender its licenses in the Motor Carrier Radio Service under which this system is currently operating, and that TMC IS AUTHORIZED to install and operate the channel quantities (or equivalent thereof) as specified in paragraph two above.

6. IT IS FURTHER ORDERED that Sections 2.106, 21.120, and 21.701 of the Commission's Rules ARE HEREBY WAIVED to permit TMC to use the existing frequencies and transmitters for a period not to exceed five years from the release date of this order.[1]

7. IT IS FURTHER ORDERED that the CHIEF, COMMON CARRIER BUREAU IS DELEGATED authority to waive the necessary rules and grant any other applications that TMC may file consistent with paragraph 10 of our *Memorandum Opinion and Order* of July 31, *supra*.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

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[1] To insure compliance with this condition TMC should file applications for conversion to common carrier frequencies no later than 9 months prior to the expiration of the five year period.

F.C.C. 73-1303

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of ULTRACOM OF LIBERTY COUNTY, INC., LIBERTY COUNTY (UNINCORPORATED AREAS), TEX. For Certificate of Compliance	CAC-2739 TX317

MEMORANDUM OPINION AND ORDER

(Adopted December 12, 1973; Released December 28, 1973)

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

1. On June 27, 1973, UltraCom of Liberty County, Inc., filed for a certificate of compliance to operate a new cable television system in certain unincorporated areas of Liberty County, Texas, which are located outside of all television markets.[1] The applicant proposes carriage of the following television signals:

KUHT (Educ., Channel 8), Houston, Texas.
KHOU-TV (CBS, Channel 11), Houston, Texas.
KHTV (Ind., Channel 39), Houston, Texas.
KPRC-TV (NBC, Channel 2), Houston, Texas.
KTRK-TV (ABC, Channel 13), Houston, Texas.
KVRL (Ind., Channel 26), Houston, Texas.
KTRE-TV (NBC-ABC, Channel 9), Lufkin, Texas.
KBMT (ABC, Channel 12), Beaumont, Texas.
KFDM-TV (CBS, Channel 6), Beaumont, Texas.
KJAC-TV (NBC, Channel 4), Port Arthur, Texas.

This proposal is consistent with the carriage requirements of Section 76.57 of the Commission's Rules, and the application is unopposed.

2. UltraCom contends that unincorporated areas of Texas cannot issue cable television franchises within the contemplation of Section 76.31 of the Rules. In support of its contention, UltraCom furnishes letters it has received from Malcolm Cohn, Esq., City Attorney for Cleveland, Texas, and Judge Thomas J. Hightower, County Judge for Liberty County, Texas. These letters indicate that no jurisdiction exists to issue franchises in the pertinent areas. Judge Hightower's letter states:

> This is to advise that I can find no authority nor does Liberty County claim any authority existing that would permit Liberty County to have jurisdiction whatever to issue cable television franchises in unincorporated areas in Liberty County, Texas.

In par. 116, *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326, 366 (1972), we indicated that we would consider on a

[1] The population of these unincorporated areas is 27,387.

case-by-case basis claims 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.

3. In the absence of a franchise, UltraCom has made the following representations to the Commission: (a) the system will be operated off the same headend which will serve UltraCom's proposed system at Cleveland, Texas, also located in Liberty County; (b) the City of Cleveland completely reviewed UltraCom's qualifications and construction arrangements; (c) UltraCom will complete 20 percent of its construction within one year of certification and at least an additional 20 percent in each succeeding year; (d) UltraCom will utilize the same rate schedule established by the City of Cleveland and will submit any proposed rate increases to Liberty County officials for prior approval; (e) UltraCom will establish complaint procedures and will maintain a local business office; (f) UltraCom will incorporate modifications of FCC Rules into its operating standards within one year; and (g) UltraCom will seek Commission renewal within fifteen years after receiving its initial certificate.

4. We find that UltraCom has submitted an acceptable alternative proposal which assures compliance with the substance of Section 76.31 of the Rules. Therefore, a certificate of compliance will be issued, valid until March 31, 1977, subject to the same conditions which we have imposed in other similar cases:[2] This grant is made subject to any further orders of the Commission designed to resolve general problems inherent in non-franchised cable operations, or to address any special problems that may be brought to the Commission's attention involving cable operations in the subject community.

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 certificate of compliance (CAC–2739) filed by UltraCom of Liberty County, Inc., for certain unincorporated areas of Liberty County, Texas, IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[2] E.g., *Mahoning Valley Cablevision, Inc.*, FCC 73–347, 40 FCC 2d 439 (1973).

F.C.C. 73–1306

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of UNICOM, INC., VILLAGE OF PARK FOREST SOUTH, ILL. For Certificate of Compliance	CAC–1070 IL165

MEMORANDUM OPINION AND ORDER

(Adopted December 12, 1973; Released December 28, 1973)

BY THE COMMISSION:

1. Unicom, Inc., alleges that it operates a cable television system at the Village of Park Forest South, Illinois, a community located in the Chicago, Illinois, television market (#3). Its facilities now offer the following television signals:

WSNS–TV (Ind., Channel 44), Chicago, Illinois.
WFLD–TV (Ind., Channel 32), Chicago, Illinois.
WGN–TV (Ind., Channel 9), Chicago, Illinois.
WMAQ–TV (NBC, Channel 5), Chicago, Illinois.
WTTW (Educ., Channel 11), Chicago, Illinois.
WXXW (Educ., Channel 20), Chicago, Illinois.
WCIU–TV (Ind., Channel 26), Chicago, Illinois.
WLS–TV (ABC, Channel 7), Chicago, Illinois.
WBBM–TV (CBS, Channel 2), Chicago, Illinois.
WCAE (Educ., Channel 50), St. John, Indiana.

In its application, Unicom requests certification to add the following television broadcast signals:

WNDU–TV (NBC, Channel 16), South Bend, Indiana.
WSBT–TV (CBS, Channel 22), South Bend, Indiana.

The Village of Park Forest South has expressed its opposition to Unicom's application on the ground that since Unicom has heretofore served only an apartment complex which is under common ownership, it has been operating as a master antenna system and not as a cable television system as defined in Section 76.5(a) of the Commission's Rules [1] and, therefore, must apply for a certificate of compliance as a new system prior to expanding its services. Because insufficient evidence has been presented to us on this issue, and since we are denying

[1] Section 76.5(a) states that the term "cable television system" shall not include "any such facility that serves only the residents of one or more apartment dwellings under common ownership, control, or management, and commercial establishments located on the premises of such an apartment house." We note that Unicom has not filed annual reporting forms for its facilities at Park Forest South, as required of operating cable television systems by Sections 76.401 *et seq.* of the Rules.

this application on other grounds, we do not rule at this time on Unicom's status under our rules.[2]

2. The two signals which Unicom proposes to add to its facilities each carry more than 10 hours of prime time network programming per week and are, therefore, not "independent stations" as defined by Section 76.5(n) of the Rules.[3] Thus, the proposed carriage of these stations is not consistent with Section 76.61(c) of the Rules, which would permit a similarly situated cable system to add two distant independent signals. Unicom has made no attempt to justify this inconsistency.[4]

For the foregoing reasons, the Commission finds that a grant of the subject application would not be consistent with the public interest.

Accordingly, IT IS ORDERED That the application for certificate of compliance (CAC–1070), filed by Unicom, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[2] Should Unicom resubmit an application to add signals to its facilities, it, as well as the Village, are requested to submit evidence concerning number of subscribers and area of service to enable us to determine Unicom's status under our Rules. We do note, however, that the signals presently carried on the facilities would be consistent with Section 76.61 of the Rules.

[3] Section 76.5(n) defines an "independent station" as "a commercial television broadcast station that generally carries in prime time not more than 10 hours of programming per week offered by the three major national television networks."

[4] Additionally, Unicom's application is not consistent with our Rules in the following respects:

a. It contains no statement that explains how Unicom's plans for the availability and administration of access channels are consistent with our Rules, as required by Section 76.13(b)(4);

b. It contains no affidavit of service of basic information on a construction permittee (WCFL–TV, Chicago, Illinois) and the local superintendent of schools, as required by Section 76.13(b)(6);

c. It contains no statement that a copy of the application will be made available for public inspection in Park Forest South, as required by Section 76.13(b)(7).

F.C.C. 73–1349

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LETTER TO REV. EVERETT C. PARKER, DIRECTOR, OFFICE OF COMMUNICATION, UNITED CHURCH OF CHRIST
Concerning 1972 Massachusetts Television Station License Renewals

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released January 4, 1974)

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

1. The Commission has before it for consideration: (i) a Petition for Reconsideration, filed June 22, 1972, as amended July 13, 1972, by the Office of Communication, United Church of Christ, and others (hereinafter referred to an UCC), directed against the Commission's action of May 24, 1972, FCC 72–438, denying a request by Reverend Everett C. Parker, Director, Office of Communication, UCC, that the Commission initiate an inquiry into the employment practices of Massachusetts television stations and that pending the result of such inquiry all license renewals be deferred; and (ii) oppositions to the Petition for Reconsideration filed by New Boston Television, Inc., licensee of WSBK–TV, Boston; Westinghouse Broadcasting Company, Inc., licensee of WBZ–TV, Boston[1]; WGBH Educational Foundation, licensee of WGBH–ED–TV and WGBX–ED–TV, Boston; RKO General, Inc., licensee of WNAC–TV Boston; WGAL Television, Inc., licensee of WTEV–TV, New Bedford; and WHYN Stations Corporation, licensee of WHYN–TV, Springfield.

BACKGROUND

2. The broadcast license expiration date for stations located in the State of Massachusetts was April 1, 1972. By letter dated March 23, 1972, UCC advised the Commission that it had conducted a study of the employment practices of Massachusetts television stations. Based on its study, which consisted of a review of each station's 1971 Annual Employment Report (FCC Form 395) and Equal Employment Op-

[1] UCC's July 13, 1972, amendment withdrew its request that the license renewal of Station WBZ–TV, Boston, be stayed, UCC indicated that it believed that the significant improvement of employment practices disclosed by WBZ–TV's 1972 Form 395 justified a full three year renewal of license and that it was relying upon the licensee's representations in its opposition that further efforts on its part was called for, particularly in the employment of female officials and managers. However, UCC continued to urge the Commission to conduct an investigation of employment practices to include all Massachusetts television stations.

portunity Program (Section VI of Application for Renewal of License—FCC Forms 303 or 342). UCC concluded that these stations fail to employ members of minority groups (particularly blacks and women) in significant numbers, except in positions of the lowest level. UCC therefore requested the Commission to initiate an inquiry into the employment practices of Massachusetts television stations to determine whether there is actual intent to discriminate against minorities as against failure to carry out affirmative programs of equal employment opportunity. It also requested that pending the results of such an inquiry, all license renewals be deferred. A copy of UCC's study, entitled "Massachusetts Statistics and Equal Employment Programs—An Analysis," dated March 20, 1972, was attached to its letter. The study involved a total of 11 Massachusetts television stations—7 stations in the Boston area [2]; 1 in New Bedford [3]; 2 in Springfield [4]; and 1 in Worcester [5]. The study included a calculation of the number and percentage of minorities and women employed full and part-time overall and at each station, an examination of employment figures for each of the top four job categories overall and at the separate stations, a summary of the overall employment statistics in the lower five job categories, and gave a generally critical analysis of each station's equal employment program.

3. The Commission, by letter dated May 24, 1972, FCC 72–438, denied UCC's request concluding that no reason had been advanced by UCC warranting an overall inquiry into the employment practices and policies of all Massachusetts television stations. Noting that an analysis of statistical data may be useful to show employment patterns and may raise appropriate questions as to the causes of such patterns, the Commission also pointed out that the overall employment figures of a particular licensee may not change substantially over a relatively short period of time and that one year's statistics can thus be misleading since such statistics—standing alone—would not necessarily show the affirmative efforts, or lack of such efforts, by licensees to comply with the Commission's nondiscrimination rules. The Commission stated that it will, and indeed is obligated to, conduct an inquiry when presented with specific information showing that a licensee's employment policies and practices prevent equal employment opportunities, or that the licensee has in fact discriminated against an applicant or employee on the basis of race, color, religion, national origin, or sex.

4. In its instant petition, UCC seeks reconsideration of the Commission's action and advances four principal reasons in support of its request. First, UCC states that the Commission action was based on clear mistakes of fact on material matters in that the Commission's letter of May 24 failed to indicate that UCC's initial request was based on an analysis of each station's 1972 equal employment opportunity program as well as their 1971 Annual Employment Reports. UCC also alleges that the Commission's letter contained several errors regarding WHYN–TV. UCC contends that it did not allege that WHYN–TV had no minority or women employees but, instead, that the station had

[2] WBZ–TV, WGBH–TV, WGBX–TV, WHDH–TV, WKGB–TV, WNAC–TV, and WSBK–TV.
[3] WTEV–TV.
[4] WHYN–TV and WWLP–TV.
[5] WSMW–TV.

no full-time minority employees in the top four job categories. It states that the Commission erred in suggesting that WHYN–TV's renewal application demonstrated improvement in the station's minority employment profile since the renewal application did not indicate any such increase; that it was only after petitioners had complained to the Commission that an increase of minority employment was indicated by the station; and that there is no way of knowing whether the improvement was made "under the spotlight" of the complaint. UCC also states that WHYN–TV's list of efforts to employ additional minority personnel did not claim that these efforts were made "since filing its 1971 Annual Employment Report" as indicated by the Commission's letter, and that WHYN–TV may well have listed every transitory contact with a minority person since the founding of the station.

5. Second, UCC maintains that the Commission did not make findings adequate to support its action, nor did it adequately articulate the reasons for its action. It states that its complaint against the Massachusetts television stations as a whole was that they have employed insignificant numbers of minority group members and women in the upper four job categories which in 1971 constituted 71% of all television jobs in the state and that even those employing significant numbers of minority group members and women concentrated them in lowest level jobs. UCC maintains that one year's statistics are an accurate measure of a station's employment practices in view of the slowness of change and relative stability of employment in the television industry; that although the Commission did not require affirmative efforts prior to 1969, deliberate discrimination was clearly proscribed; and that figures at any particular date represent the accumulated result of the practices and policies followed by the licensee in several preceding years. UCC alleges that the Commission letter contains an unstated major premise that the Commission has no obligation to search out the facts or even examine materials contained in its records unless a complainant furnishes highly probative evidence; that the Commission does not adequately articulate the quantum of evidence required to spur it to action; that the Commission's failure to explain its dismissal of the 1971 reports as evidence is questionable in that the Commission has chosen to ignore case law in the federal courts as well as its own prior rulings with regard to the use of statistical information; and that when the Commission changes its policies it must identify and articulate the reasons.

6. Third, UCC states that the Commission failed to take into account the Form 395 Reports of Massachusetts television stations filed in May 1972. The Commission's letter is criticized for stating that one year's statistics are not sufficient evidence to indicate discrimination and at the same time ignoring the 1972 Form 395's which were due to be filed one week after the date of the Commission's letter. UCC alleges that if the Commission had waited and analyzed the 1972 Form 395's it would have discovered that the Massachusetts stations made very little improvement in their employment of blacks and women; that the fact is that there has been no significant improvement in the status of minority and women employees between 1971 and 1972; that the 1972 Form 395 Report for WHYN–TV shows that the only woman in the four top job categories had been eliminated, leaving no full-

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time minority or female employees at the station in any except the lowest job categories; and that the 1972 filings belie the Commission assumption that there has been such improvement. UCC further contends that blacks and women have been almost totally excluded from all except the lowest jobs; that even in the two stations with the most enlightened employment policies, little attention is given to the promotion of blacks and women; and that they are seriously under represented in the professional, sales, and managerial posts.

7. Fourth, UCC states that the Commission has an affirmative obligation under the Federal Constitution and its own rules to take such action as is necessary to eliminate discriminatory employment practices by Federal licensees. It contends that action by broadcasters is "state action" for constitutional purposes and that acquiescence by the Commission in discriminatory employment practices is constitutionally equivalent to discrimination by the Commission itself. UCC asserts that the Commission has gone out of its way to avoid dealing with the issue on its merits by failing to consider the statistical data which is on file; that statistical evidence has universally been accepted in the federal courts as probative; that by refusing to wait one week to examine the 1972 Form 395 Reports, the Commission has indicated that it places a much higher priority on the tenure of the station licensees than it places on the national commitment to eliminate discrimination; and that the Commission's decision is incompatible with its constitutional obligation to take whatever action is necessary to eliminate discriminatory practices by federal licensees. UCC concludes that the Commission should reconsider its letter ruling dated May 24, 1972; should stay its orders granting renewal of license to the stations concerned; and should conduct an inquiry into the employment practices of the Massachusetts television stations.

8. Attached to UCC's Petition for Reconsideration was a copy of a second study entitled "Massachusetts Television Stations: Comparison of 1971 and 1972 Annual Employment Reports, Form 395," dated June 20, 1972. This second study included a comparison of the 1971 and 1972 Annual Employment Report statistics concerning the number and percentage of minorities and women employed full and part-time overall and at each station, the appropriate employment figures for each of the top four job categories overall and at the separate stations, and a summary of overall employment statistics in the lower five job categories. The second study concluded that in the four top job categories, comprising over 72 percent of the full-time jobs in the 1972 reports, minority group members appear to have made important gains at two stations, but minimal improvements or even reductions in the proportions of minority job holders in the upper levels at other stations. Concerning women, the second study concluded that statistics in the upper four job categories, full-time, were generally discouraging with significant gains for women at two stations, and changed percentages at many stations resulting from adjustments in overall employment within specific job categories rather than actual gains or losses in jobs for females.

DISCUSSION

9. First, UCC contends that the Commission's action was based on clear mistakes of fact on material matters. While our letter of May 24 did not specifically indicate that UCC's initial request was also based on an analysis of each station's 1972 equal employment opportunity program, the Commission was cognizant of this and did examine the equal employment opportunity programs of the Massachusetts television stations. UCC submitted, generally, that the programs emphasize procedure and excuses, do not state goals, and possess a "boiler plate" quality. The Commission's equal employment opportunity rules require each station 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 (Section 73.680(b), Commission Rules and Regulations). Section VI of the broadcast application form sets forth general guidelines for development of programs which assure nondiscrimination in recruiting, hiring and selection, placement and promotion, and other areas of employment practices. After reviewing the programs of the stations and the critical summaries furnished by petitioner, the Commission felt that UCC failed to demonstrate that the policies followed by the broadcasters in question contain artificial barriers to equal employment opportunities. WWLP–TV, Springfield, was advised by the Commission that its answers to Part VI of the application for renewal concerning its equal employment opportunity program were unresponsive and the station amended its application on March 28, 1972, to provide basic compliance with the Commission's requirements. The Commission is of the opinion that each of the licensees have described a program designed to assure nondiscrimination in recruiting, hiring and selection, placement and promotion, and other areas of their employment practices.

10. The Commission's letter of May 24 was in error in stating that UCC's analysis indicated that WHYN–TV, Springfield, had no minority or women employees. As pointed out by UCC in its Petition for Reconsideration, its contention was that the station had no minority employees in the top four job categories. UCC's first study did properly indicate one female employee in the top four job categories and minority and women employees in the lower five job categories. The Commission did not intend to infer in its letter that WHYN–TV's 1972 renewal application indicated any actual numerical increase in the number of minority employees over the total reported in the station's 1971 Annual Employment Report. Section VI of the renewal application does not require a total or statistical breakdown of employment figures by race or sex such as that found in the annual employment report. Rather, it was the Commission's intention to point out that the efforts described by the licensee in Section VI of its renewal application were indicative of a positive equal employment opportunity program which constituted a significant improvement in approach to the employment area of minority and women. The 1971 Annual Employment Report of WHYN–TV listed two full-time minority employees and one part-time minority employee. In its April 12, 1972, response to UCC's original request, WHYN–TV indicated that its staff,

at renewal time, included two full-time and five part-time minority employees; and that the staff, at the time of the response, had three full-time and four part-time minority employees. UCC maintains that there is no way of knowing on the present record whether this improvement was made "under the spotlight" of the complaint, in which case it would not be entitled to weight. However, the Commission believes that absent any indication that such improvements are made in bad faith solely to thwart the thrust of a specific complaint, such improvements merit consideration since they tend to show the efficacy of a licensee's equal employment opportunity program and its bona fide efforts in this area. The 1972 Annual Employment Report of WHYN–TV reflecting the employment figures from one payroll period in the first quarter of 1972 shows two full-time and five part-time minority employees, while its opposition and response of July 12, 1972, to UCC's Petition for Reconsideration lists, at that time, four full-time and four part-time minority employees, and its 1973 Annual Employment Report for the payroll period ending March 31, 1973, indicates three full-time and five part-time minority employees. Despite slight variances in its employment statistics during this approximate one year period, it is an indication that the licensee is continuing a good faith effort in the area of minority employment. The Commission's letter of May 24 did, however, note some examples, submitted in WHYN–TV's response to UCC's original request, of significant efforts taken by the station to hire and train minority group employees. UCC is correct in pointing out in its petition that these particular examples cited by the station were not claimed by it to be efforts made "since filing its 1971 Annual Employment Report" as erroneously stated in the Commission's letter.

11. UCC's second, third, and fourth contentions in its Petition for Reconsideration are premised upon the allegation that its first study and analysis of the annual employment statistics and equal employment opportunity programs of Massachusetts television stations, supplemented by its second comparative study, shows that the stations have employed insignificant numbers of minority group members (particularly blacks) and women in the upper four job categories. UCC's allegation is based primarily on the alleged disparities between percentage of minorities employed by each station overall and in the upper four job categories and the percentage of minorities in the total population of each city of license according to the 1970 Census. However, it is clear that a broadcast station's public interest obligations extend to its entire service area and not just merely the central city. See *Stone* v. *F.C.C.*, 466 F. 2d 316, 327 (D. C. Cir. 1972). The Commission believes that statistical comparisons involving broadcast stations serving metropolitan areas would more accurately reflect reality if comparisons were made to Standard Metropolitan Statistical Areas (SMSA's), where possible, rather than to statistics for the actual city of license. Particularly with respect to broadcast employment, it is noted that the pool of prospective employees in a geographic metropolitan area must realistically be considered as including residents of all communities within that area.

12. We have previously stated that the Commission has never indicated that "fully proportional" employment of minority groups is

called for by our rules, since we do not believe that fair employment practices necessarily result in the employment of any minority group in direct proportion to its numbers in the community. *Report and Order*, 23 F.C.C. 2d 430, 431 (1970). The number of minority group members in an area that are qualified, trained, and capable to hold certain positions may be considerably less than the proportion to the population as a whole.[6] However, an analysis of statistical data may be useful to show employment patterns and if such an analysis reveals an extremely low rate of minority or female employment, it may raise appropriate questions as to the causes of such patterns. A Commission inquiry may also be warranted if broadcast stations located in areas with significant minority populations have no minority or female employees in other than menial positions.

13. The Commission denied UCC's original request because we concluded that no reason had been advanced warranting such an inquiry, nor did UCC cite specific instances of discrimination or show that the equal employment opportunity programs for the stations were not *bona fide* efforts or prevented equal employment opportunities. In considering UCC's Petition for Reconsideration we have analyzed the annual employment reports for the past three years of the eleven (11) Massachusetts television stations included in its two studies. The Appendix reflects the minority population characteristics for the State of Massachusetts and the SMSA's of Boston, New Bedford, Springfield, and Worcester; the total and upper four job category full-time employment statistics for 1971, 1972, and 1973 concerning minority groups and women employed by television stations in Massachusetts, in each of the SMSA's, and at each station individually. The number and percent of increase or decrease from 1971 to 1973 is reflected for the State totals, the SMSA totals, and at each station. Where possible, the proportion of increase from 1971 to 1973 representing women and minorities in total full-time employees and full-time employees in the upper four job categories is also indicated. It is noted that the two UCC studies also included statistics for part-time and on-the-job trainees, but we feel, however, that it is adequate at this time to examine just the figures for full-time employment. It should also be pointed out that while the Commission generally accepts UCC's position that the upper four job categories reflected on the Annual Employment Report (officials and managers, professional, technicians, and sales) represent higher pay, more desirable positions, it is noted that salaries for other categories, such as that of craftsman (skilled), could well equal or surpass some of those included in the top four, dependent upon variable factors. UCC's two studies indicated the figures and percentages for each of the top four job categories. We believe it is sufficient to examine the total figures representing the top four job categories combined. Although we believe it proper to examine the

[6] Other factors affecting the employment resources available in a broadcaster's area would include the size of the minority and female employment forces, the percentage of the minority and female work forces as compared with the total work force in the immediate labor area, the availability of promotable and transferable minorities and women within the licensee's organization, the existence of training institutions capable of training persons in the requisite skills, and the degree of training which the station is reasonably able to undertake as a means of making all job classes available to minorities and women.

employment profile of a licensee regarding positions of responsibility, we do not believe it is appropriate for us to question the licensee's judgment in determining the number and placement of minority group members or women in specific individual job categories.

14. Our statistical analysis of the employment figures for the Massachusetts television stations involved in UCC's request is, of course, self-explanatory. However, we do note that the increases, generally, in minority and female employment, in the full-time upper four job categories as well as total full-time employment, are extremely encouraging and appear to indicate that the licensees are making *bona fide* efforts to implement their equal employment opportunity programs, create a positive policy of nondiscrimination, eliminate artificial barriers to equal employment opportunities, and improve the overall employment status of minorities and women. This can be exemplified by comparing the State population figures with the total employment statistics of the stations and the population characteristics of each SMSA with the employment statistics of the stations serving that particular area. The 1970 Census indicates that 3.7% of the total Massachusetts population is composed of minority group members, yet the percentage of minority employees at the eleven (11) television stations increased from 7.5% of the total full-time employees in 1971 to 12.2% in 1973. The percentage of female employees increased from 23.4% of the total full-time employees in 1971 to 25.9% in 1973. In the upper four job categories the percentage of minority employees at the eleven (11) television stations increased from 5.4% of the full-time employees in 1971 to 10.1% in 1973, while the percentage of female employees increased from 7.6% of the full-time employees in 1971 to 14.7% in 1973.

15. The 1970 Census indicates that the Boston SMSA has a 5.5% minority population, while the percentage of minority employees at the seven Boston stations increased from 8.3% of the total full-time employees in 1971 to 13.4% in 1973, and the percentage of women employees increased from 25% of the total full-time employees in 1971 to 26.7% in 1973. In the upper four job categories at the seven Boston stations the percentage of minority employees increased from 6.2% of the full-time employees in 1971 to 11.3% in 1973, and the percentage of female employees increased from 8.4% of the full-time employees in 1971 to 15.9% in 1973.

16. As indicated by the 1970 Census, the population of the New Bedford SMSA is composed of 3.2% minority group members, yet the one station in New Bedford increased the percentage of its minority employees from 5.5% of the total full-time employees in 1971 to 10.5% in 1973, while increasing the percentage of women employees from 20.5% of the total full-time employees in 1971 to 26.3% in 1973. The New Bedford station also increased its full-time minority employees in the upper four job categories from 4.6% in 1971 to 8.5% in 1973, and the percentage of female full-time employees from 6.8% in 1971 to 12.8% in 1973.

17. The 1970 Census indicates that 4.9% of the Springfield SMSA is composed of minority group members, while the two stations serving that area increased the percentage of their minority employees from

3.7% of the total full-time employees in 1971 to 5.9% in 1973, and increased the percentage of women employees from 16.8% of the total full-time employees in 1971 to 17.8% in 1973. In the upper four job categories the percentage of minority employees at the two stations increased from 1.5% of the full-time employees in 1971 to 2.7% in 1973, and the percentage of women full-time employees from 1.5% in 1971 to 2.7% in 1973.

18. As indicated by the 1970 Census, the population of the Worcester SMSA is composed of 1.4% minority group members, and the one station in the Worcester area showed a decrease in the percentage of its minority employees from 4.1% of the total full-time employees in 1971 to 0 in 1973, while showing an increase in the percentage of female employees from 16.3% of the total full-time employees in 1971 to 24.3% in 1973. The Worcester station also showed a decrease in the percentage of its minority employees in the upper four job categories from 2.3% of the full-time employees in 1971 to 0 in 1973, but showed an increase in the percentage of females in the upper four job categories from 6.8% of the full-time employees in 1971 to 15.2% in 1973.

19. Some individual stations, of course, showed greater percentage increases in the employment of minorities and women during the period covered by the three annual employment reports, while others showed lesser increases or even slight declines. Some of the stations indicated slight declines in 1972, but increases in 1973. This appears to point up the difficulty of attempting to judge compliance solely on the picture of a station's employment situation at one particular point of time. Various factors such as overall decrease in station employment, economic considerations, and certain other business necessities should be considered along with raw statistics to reach an equitable conclusion. We believe, however, that generally the numbers of minorities and women employed full-time totally and in the upper four job categories by Massachusetts television stations overall, by SMSA, and individually for the years 1971, 1972, and 1973 fall within a zone of reasonableness when compared with appropriate population statistics. It should be pointed out that Blacks constitute the most substantial proportion, by far, of minority group members employed by the stations.

20. We do note, however, that several stations employ few, if any, full-time women employees in the upper four job categories of officials and managers, professionals, technicians, and sales workers. WHYN–TV, Springfield, has decreased its number and percentage of full-time female employees in the upper four job categories from 1 or 3.3% out of a total of 30 full-time employees in the upper four job categories in 1971 to 0 out of a total of 41 in 1973. While WWLP–TV, Springfield, has reduced the total number of full-time employees in the upper four job categories from 35 in 1971 to 33 in 1973, yet increased the number of full-time females in the upper four job categories from 0 in 1971 to 2 or 6.1% in 1973, we believe the number and percentage of female employees in the upper four job categories is still below reasonable expectations. The same also appears true for WSBK–TV, Boston, which decreased its number and percentage of full-time female employees in the upper four job categories from 3 or 5.4% out of a total of 56 full-time employees in the upper four job categories in 1971 to 2 or 3.6% out of a total of 56 in 1973. There is no indication that any of these

stations have actually discriminated against women in recruiting, hiring and selection, placement and promotion, or other areas of their employment practices. We believe, however, that additional affirmative action efforts must be undertaken in the area of full-time female employment in the upper four job categories by the licensees of these stations and that Commission action designed to assure that such efforts are undertaken is warranted. While WSMW–TV, Worcester, indicated a decline in the number of total full-time minority employees from 2 or 4.1% in 1971 to 0 in 1973 and a decline in the number of full-time minority employees in the upper four job categories from 1 or 2.3% in 1971 to 0 in 1973, we believe that the 1.4% minority group population of the Worcester SMSA is not a significantly great enough percentage to warrant inquiry of the station. The Commission also recognizes that from 1971 to 1973 WSMW–TV had substantial declines of 24.5% in the total number of full-time employees and 25% in the number of full-time employees in the upper four job categories.

21. In view of the above, IT IS ORDERED, That the Petition for Reconsideration, filed June 22, 1972, as amended July 13, 1972, by the United Church of Christ and others IS GRANTED to the extent that the licensees of WHYN–TV, WWLP–TV, and WSBK–TV will be required to conduct additional affirmative action efforts regarding full-time female employment in the upper four job categories and IS DENIED in all other respects.

22. IT IS FURTHER ORDERED, That the WHYN Stations Corporation, licensee of Station WHYN–TV, Springfield, Massachusetts; Springfield Television Broadcasting Corporation, licensee of Station WWLP–TV, Springfield, Massachusetts; and New Boston Television, Inc., licensee of Station WSBK–TV, Boston, Massachusetts:

(i) Submit to the Commission within 45 days of the date of release of this Memorandum Opinion and Order a list of local women's organizations, agencies, local female community leaders, and educational institutions with which they will maintain systematic communication each time their stations seek to fill a job position in the upper four job categories; and

(ii) Submit to the Commission, concurrent with the filing of their 1974 and 1975 annual employment reports (FCC Form 395), a detailed statement on the affirmative action undertaken to seek and encourage female applicants for each job opening in the upper four job categories filled during each twelve (12) month period preceding the pay period covered by the filing of their stations' 1974 and 1975 annual employment reports, respectively, with female persons designated.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

APPENDIX

FULL-TIME EMPLOYMENT PROFILE OF ELEVEN MASSACHUSETTS TELEVISION STATIONS

Massachusetts Population Characteristics [1]

	Total	White	Negro and other races	Negro	Other [2] races
State of Massachusetts	5,689,170	5,477,624	211,546	175,817	35,729
	100%	96.3%	3.7%	3.1%	.6%
Boston SMSA	2,753,700	2,602,741	150,959	127,035	23,924
	100%	94.5%	5.5%	4.6%	.9%
New Bedford SMSA	152,642	147,765	4,877	3,894	983
	100%	96.8%	3.2%	2.6%	.6%
Springfield-Chicopee-Holyoke SMSA	529,922	504,017	25,905	24,153	1,752
	100%	95.1%	4.9%	4.6%	.3%
Worcester SMSA	344,320	339,457	4,863	3,665	1,198
	100%	98.6%	1.4%	1.1%	.3%

[1] Source: U.S. Bureau of the Census, Census of Population: 1970, *General Population Characteristics*, final report PC (1)—B23 Massachusetts, Aug. 1971, tables 17, 18, and 23.
[2] Includes Indian, Japanese, Chinese, Filipino, and all other.

FULL-TIME EMPLOYEES OF ELEVEN MASSACHUSETTS TELEVISION STATIONS

All full-time employees

	Total	Male	Female	Minority
1971	[1] 1,032	790(76.6%)	242(23.4%)	77 (7.5%)
1972	1,169	894(76.5%)	275(23.5%)	115 (9.8%)
1973	1,228	910(74.1%)	318(25.9%)	150(12.2%)
Number and percent of increase or decrease 1971–73	+196(19%)	+120(15.2%)	+76(31.4%)	+73(94.8%)

[1] WHDH–TV's 1971 Annual Employment Report erroneously reflected a total of 122 males in sec. III, col. 2, a correct addition of figures in the column reflects 120 males. The total number of full-time employees of the 11 stations for 1971 is 1,032 and not 1,034 as reflected by the UCC studies.

NOTE.—Women represented 38.8 percent of the total increase of 196 full-time employees from 1971 to 1973 and minority group members represented 37.2 percent.

Full-time employees in the upper four job categories [1]

	Total	Male	Female	Minority
1971	735	679(92.4%)	56 (7.6%)	40 (5.4%)
1972	845	764(90.4%)	81 (9.6%)	59 (7%)
1973	945	806(85.3%)	139(14.7%)	95(10.1%)
Number and percent of increase or decrease 1971–73	+210(28.6%)	+127(18.7%)	+83(148.2%)	+55(137.5%)

[1] Full-time employees in the upper four job categories constituted 71.2 percent of all full-time employees at the stations in 1971; 72.3 percent in 1972; and 77 percent in 1973. The upper four job categories reported on the annual employment report (FCC form 395) are officials and managers, professionals, technicians, and sales.

NOTE.—Women represented 39.5% of the increase of 210 full-time employees in the upper four job categories from 1971 to 1973 and minority group members represented 26.2 percent.

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	77	71(92.2%)	3(3.9%)	2(2.6%)	1(1.3%)
1972	115	103(89.6%)	4(3.5%)	3(2.6%)	5(4.3%)
1973	150	129(86%)	8(5.3%)	2(1.4%)	11(7.3%)
Number and percent of increase or decrease 1971–73	+73(94.8%)	+58(81.7%)	+5(166.7%)	0	+10(1000%)

NOTE.—Blacks respresented 79.5 percent of the total increase of 73 full-time minority employees from 1971 to 1973; Orientals 6.8 percent; and Spanish-surnamed Americans 13.7 percent.

Full-time minority employees in the upper 4 job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	40	37(92.5%)	2(5%)	1(2.5%)	0
1972	59	55(93.2%)	3(5.1%)	1(1.7%)	0
1973	95	87(91.6%)	4(4.2%)	1(1%)	3(3.2%)
Number and percent of increase or decrease 1971–73	+55(137.5%)	+50(135.1%)	+2(100%)	0	+3

NOTE.—Blacks represented 90.9 percent of the increase of 55 full-time minority employees in the upper 4 job categories from 1971 to 1973; Orientials 3.6 percent; and Spanish-surnamed Americans 5.5 percent.

FULL-TIME EMPLOYEES OF SEVEN BOSTON AREA TELEVISION STATIONS [1]

All full-time employees

	Total	Male	Female	Minority
1971	803	602(75%)	201(25%)	67 (8.3%)
1972	928	698(75.2%)	230(24.8%)	105(11.3%)
1973	1,014	743(73.3%)	271(26.7%)	136(13.4%)
Number and percent of increase or decrease 1971–73	+211(26.3%)	+141(23.4%)	+70(34.8%)	+69(103%)

[1] Includes one station in Cambridge, Mass.

NOTE.—Women represented 33.2 percent of the total increase of 211 full-time employees from 1971 to 1973 and minority group members represented 32.7 percent.

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	582	533(91.6%)	49 (8.4%)	36 (6.2%)
1972	682	610(89.4%)	72(10.6%)	56 (8.2%)
1973	791	665(84.1%)	126(15.9%)	89(11.3%)
Number and percent of increase or decrease 1971–73	+209(35.9%)	+132(24.8%)	+77(157.1%)	+53(147.2%)

NOTE.—Women represented 36.8 percent of the increase of 209 full-time employees in the upper 4 job categories from 1971 to 1973 and minority group members represented 25.4 percent.

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	67	62(92.5%)	3(4.5%)	1(1.5%)	1(1.5%)
1972	105	95(90.5%)	4(3.8%)	2(1.9%)	4(3.8%)
1973	136	119(87.5%)	7(5.1%)	2(1.5%)	8(5.9%)
Number and percent of increase or decrease 1971–73	+69(103%)	+57(91.9%)	+4(133.3%)	+1(100%)	+7(700%)

NOTE.—Blacks represented 82.6 percent of the total increase of 69 full-time minority employees from 1971 to 1973; Orientals 5.8 percent; American Indian 1.5 percent; and Spanish-surnamed Americans 10.1 percent.

Full-time minority employees in the upper four job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	36	33(91.7%)	2(5.6%)	1(2.7%)	0
1972	56	52(92.8%)	3(5.4%)	1(1.8%)	0
1973	89	81(91%)	4(4.5%)	1(1.1%)	3(3.4%)
Number and percent of increase or decrease 1971–73	+53(147.2%)	+48(145.5%)	+2(100%)	0	+3

NOTE.—Blacks represented 90.6 percent of the increase of 53 full-time minority employees in the upper 4 job categories from 1971 to 1973; Orientals 3.8 percent; and Spanish-surnamed Americans 5.6 percent.

FULL-TIME EMPLOYEES OF WBZ–TV (BOSTON)

All full-time employees

	Total	Male	Female	Minority
1971	167	133(79.6%)	34(20.4%)	16 (9.6%)
1972	175	137(78.3%)	38(21.7%)	24(13.7%)
1973	189	147(77.8%)	42(22.2%)	26(13.8%)
Number and percent of increase or decrease 1971–73	+22(13.2%)	+14(10.5%)	+8(23.5%)	+10(62.5%)

NOTE.—Women represented 36.4 percent of the total increase of 22 full-time employees from 1971 to 1973 and minority group members represented 45.5 percent.

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	118	110(93.2%)	8 (6.8%)	9 (7.6%)
1972	131	118(90.1%)	13 (9.9%)	16(12.2%)
1973	151	131(86.8%)	20(13.2%)	22(14.6%)
Number and percent of increase or decrease 1971–73	+33(28%)	+21(19.1%)	+12(150%)	+13(144.4%)

NOTE.—Women represented 36.4 percent of the increase of 33 full-time employees in the upper 4 job categories from 1971 to 1973 and minority group members represented 39.4 percent.

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	16	16(100%)	0	0	0
1972	24	23(95.8%)	0	0	1(4.2%)
1973	26	25(96.2%)	0	0	1(3.8%)
Number and percent of increase or decrease 1971–73	+10(62.5%)	+9(56.3%)	0	0	+1

NOTE.—Blacks represented 90 percent of the total increase of 10 full-time minority employees from 1971 to 1973 and Spanish-surnamed Americans represented 10 percent.

Full-time minority employees in the upper four job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	9	9(100%)	0	0	0
1972	16	16(100%)	0	0	0
1973	22	22(100%)	0	0	0
Number and percent of increase or decrease 1971–73	+13(144.4%)	+13(144.4%)	0	0	0

NOTE.—Blacks represented 100 percent of the increase of 13 full-time minority employees in the upper 4 job categories from 1971 to 1975.

FULL-TIME EMPLOYEES OF WGBH–TV (BOSTON)

All full-time employees

	Total	Male	Female	Minority
1971	133	79(59.4%)	54(40.6%)	7(5.3%)
1972	147	92(62.6%)	55(37.4%)	8(5.4%)
1973	164	98(59.8%)	66(40.2%)	16(9.8%)
Number and percent of increase or decrease 1971–73	+31(23.3%)	+19(24.1%)	+12(22.2%)	+9(128.6%)

NOTE.—Women represented 38.7 percent of the total increase of 31 full-time employees from 1971 to 1973 and minority group members represented 29 percent.

Full-time employees in the upper 4 job categories

	Total	Male	Female	Minority
1971	75	59(78.7%)	16(21.3%)	3 (4%)
1972	94	74(78.7%)	20(21.3%)	3 (3.2%)
1973	128	81(63.3%)	47(36.7%)	14(10.9%)
Number and percent of increase or decrease 1971–73	+53(70.7%)	+22(37.3%)	+31(193.8%)	+11(366.7%)

NOTE.—Women represented 58.5 percent of the increase of 53 full-time employees in the upper 4 job categories from 1971 to 1973 and minority group members represented 20.8 percent.

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	7	7(100%)	0	0	0
1972	8	8(100%)	0	0	0
1973	16	14(87.5%)	1(6.25%)	0	1(6.25%)
Number and percent of increase or decrease 1971–73	+9(128.6%)	+7(100%)	+1	0	+1

NOTE.—Blacks represented 77.8% of the total increase of nine full-time minority employees from 1971 to 1973; Orientals 11.1 percent; and Spanish-surnamed Americans 11.1 percent.

Full-time minority employees in the upper four job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	3	3(100%)	0	0	0
1972	3	3(100%)	0	0	0
1973	14	12(85.7%)	1(7.15%)	0	1(7.15%)
Number and percent of increase or decrease 1971–73	+11(366.7%)	+9(300%)	+1	0	+1

NOTE.—Blacks represented 81.8 percent of the increase of 11 full-time minority employees in the upper 4 job categories from 1971 to 1973; Orientals 9.1 percent; and Spanish-surnamed Americans 9.1 percent.

FULL-TIME EMPLOYEES OF WGBX–TV (BOSTON)

All full-time employees

	Total	Male	Female	Minority
1971	53	36(67.9%)	17(32.1%)	3 (5.7%)
1972	51	32(62.7%)	19(37.3%)	4 (7.8%)
1973	52	30(57.7%)	[1] 22(42.3%)	6(11.5%)
Number and percent of increase or decrease 1971–73	−1(1.9%)	−6(16.7%)	+5(29.4%)	+3(100%)

[1] WGBX–TV erroneously reflected a total of 20 full-time female employees in sec. IV, col. 3 of its 1973 Annual Employment Report. The correct total for the col. is 22.

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	34	32(94.1%)	2 (5.9%)	1 (2.9%)
1972	31	24(77.4%)	7(22.6%)	2 (6.5%)
1973	33	25(75.8%)	8(24.2%)	4(12.1%)
Number and percent of increase or decrease 1971–73	−1(2.9%)	−7(21.9%)	+6(300%)	+3(300%)

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	3	3(100%)	0	0	0
1972	4	4(100%)	0	0	0
1973	6	6(100%)	0	0	0
Number and percent of increase or decrease 1971–73	+3(100%)	+3(100%)	0	0	0

NOTE.—Blacks represented 100 percent of the total increase of three full-time minority employees from 1971 to 1973.

Full-time minority employees in the upper four job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	1	1(100%)	0	0	0
1972	2	2(100%)	0	0	0
1973	4	4(100%)	0	0	0
Number and percent of increase or decrease 1971-73	+3(300%)	+3(300%)	0	0	0

NOTE.—Blacks represented 100 percent of the increase of three full-time minority employees in the upper four job categories from 1971 to 1973.

FULL-TIME EMPLOYEES OF WHDH-TV/WCVB-TV [1] (BOSTON)

All full-time employees

	Total	Male	Female	Minority
1971	141	[2] 120(85.1%)	21(14.9%)	8 (5.7%)
1972	249	193(77.5%)	56(22.5%)	32(12.9%)
1973	287	219(76.3%)	68(23.7%)	43(15%)
Number and percent of increase or decrease 1971-73	+146(103.6%)	+99(82.5%)	+47(223.8%)	+35(437.5%)

[1] By order dated Jan. 21, 1972, the Commission terminated the authority of WHDH, Inc. to operate WHDH-TV effective Mar. 19, 1972, and granted program test authority to Boston Broadcasters, Inc., to begin operation on channel 5 on Mar. 19, 1972. Employment statistics provided by the two licensees are listed together on this page only for the purpose of convenience. 1971 statistics were submitted by WHDH, Inc. while the 1972 and 1973 statistics were submitted by Boston Broadcasters, Inc.

[2] See first footnote on p. 2 of this appendix.

NOTE.—Women represented 32.2 percent of the total increase of 146 full-time employees from 1971 to 1973 and minority group members represented 24 percent.

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	126	117(92.9%)	9 (7.1%)	6 (4.8%)
1972	193	169(87.6%)	24(12.4%)	17 (8.8%)
1973	228	199(87.3%)	29(12.7%)	23(10.1%)
Number and percent of increase or decrease 1971-73	+102(81%)	+82(70.1%)	+20(222.2%)	+17(283.3%)

NOTE.—Women represented 19.6 percent of the increase of 102 full-time employees in the upper 4 job categories and minority group members represented 16.7 percent.

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	8	7(87.5%)	1(12.5%)	0	0
1972	32	28(87.5%)	3 (9.4%)	1(3.1%)	0
1973	43	37(86.1%)	4 (9.3%)	1(2.3%)	1(2.3%)
Number and percent of increase or decrease 1971-73	+35(437.5%)	+30(428.6%)	+3(300%)	+1	+1

NOTE.—Blacks represented 85.7 percent of the total increase of 35 full-time minority employees from 1971 to 1973; Orientals 8.5 percent; American Indians 2.9 percent; and Spanish-surnamed Americans 2.9 percent.

Full-time minority employees in the upper four job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	6	5(83.3%)	1(16.7%)	0	0
1972	17	15(88.2%)	2(11.8%)	0	0
1973	23	21(91.3%)	2 (8.7%)	0	0
Number and percent of increase or decrease 1971–73	+17(283.3%)	+16 (320%)	+1(100%)	0	0

NOTE.—Blacks represented 94.1 percent of the increase of 17 full-time minority employees in the upper 4 job categories from 1971 and 1973 and Orientals represented 5.9 percent.

FULL-TIME EMPLOYEES OF WKBG–TV (CAMBRIDGE)

All full-time employees

	Total	Male	Female	Minority
1971	58	48(82.8%)	10(17.2%)	7(12.1%)
1972	63	51(81%)	12(19%)	10(15.9%)
1973	64	52(81.3%)	12(18.7%)	13(20.3%)
Number and percent of increase or decrease 1971–73	+6(10.3%)	+4(8.3%)	+2(20%)	+6(85.7%)

NOTE.—Women represented 33.3 percent of the total increase of six full-time employees from 1971 to 1973 and minority group members represented 100 percent.

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	46	44(95.7%)	2(4.3%)	3 (6.5%)
1972	48	46(95.8%)	2(4.2%)	4 (8.3%)
1973	52	47(90.4%)	5(9.6%)	6(11.5%)
Number and percent of increase or decrease 1971–73	+6(13%)	+3(6.8%)	+3(150%)	+3(100%)

NOTE.—Women represented 50 percent of the increase of 33 full-time employees in the upper 4 job categories from 1971 to 1973 and minority group members represented 50 percent.

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	7	7 (100%)	0	0	0
1972	10	10 (100%)	0	0	0
1973	13	12(92.3%)	0	0	1(7.7%)
Number and percent of increase or decrease 1971–73	+6(85.7%)	+5(71.4%)	0	0	+1

NOTE.—Blacks represented 83.3 percent of the total increase of six full-time minority employees from 1971 to 1973 and Spanish-surnamed Americans represented 16.7 percent.

Full-time minority employees in the upper four job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	3	3 (100%)	0	0	0
1972	4	4 (100%)	0	0	0
1973	6	5 (83.3%)	0	0	1 (16.7%)
Number and percent of increase or decrease 1971–73	+3(100%)	+2(66.7%)	0	0	+1

NOTE.—Blacks represented 66.7 percent of the increase of 3 full-time minority employees in the upper 4 job categories from 1971 to 1973 and Spanish-surnamed Americans represented 33.3 percent.

FULL-TIME EMPLOYEES OF WNAC–TV (BOSTON)

All full-time employees

	Total	Male	Female	Minority
1971	169	127(75.1%)	42(24.9%)	17(10.1%)
1972	167	134(80.2%)	33(19.8%)	15(9%)
1973	175	135(77.1%)	40(22.9%)	19(10.9%)
Number and percent of increase or decrease 1971–73	+6(3.6%)	+8(6.3%)	−2(4.8%)	+2(11.8%)

NOTE.—Minority group members represented 33.3 percent of the total increase of six full-time employees from 1971 to 1973.

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	127	118(92.9%)	9 (7.1%)	10 (7.9%)
1972	131	126(96.2%)	5 (3.8%)	10 (7.6%)
1973	143	128(89.5%)	15(10.5%)	17(11.9%)
Number and percent of increase or decrease 1971–73	+16(12.6%)	+10 (8.5%)	+6(66.7%)	+7(70%)

NOTE.—Women represented 37.5 percent of the increase of 16 full-time employees in the upper 4 job categories from 1971 to 1973 and minority group members represented 43.8 percent.

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	17	14(82.3%)	1(5.9%)	1(5.9%)	1 (5.9%)
1972	15	12 (80%)	0	1(6.7%)	2(13.3%)
1973	19	16(84.2%)	0	1(5.3%)	2(10.5%)
Number and percent of increase or decrease 1971–73	+2(11.8%)	+2(14.3%)	−1(100%)	0	+1 (100%)

Full-time minority employees in the upper 4 job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	10	9 (90%)	0	1 (10%)	0
1972	10	9 (90%)	0	1 (10%)	0
1973	17	15(88.2%)	0	1(5.9%)	1(5.9%)
Number and percent of increase or decrease 1971-73	+7(70%)	+6(66.7%)	0	0	+1

NOTE.—Blacks represented 85.7 percent of the increase of 7 full-time minority employees in the upper 4 job categories from 1971 to 1973 and Spanish-surnamed Americans represented 14.3 percent.

FULL-TIME EMPLOYEES OF WSBK-TV (BOSTON)

All full-time employees

	Total	Male	Female	Minority
1971	82	59(72%)	23(28%)	9(11%)
1972	76	59(77.6%)	17(22.4%)	12(15.8%)
1973	83	62(74.7%)	21(25.3%)	13(15.7%)
Number and percent of increase or decrease 1971-1973	+1(1.2%)	+3(5.1%)	−2(8.7%)	+4(44.4%)

NOTE.—A minority group member represented the total increase of one full-time employee from 1971 to 1973.

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	56	53(94.6%)	3(5.4%)	4(7.1%)
1972	54	53(98.1%)	1(1.9%)	4(7.4%)
1973	56	54(96.4%)	2(3.6%)	3(5.4%)
Number and percent of increase or decrease 1971-73	0	+1(1.9%)	−1(33.3%)	−1(25%)

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	9	8(88.9%)	1(11.1%)	0	0
1972	12	10(83.4%)	1 (8.3%)	0	1 (8.3%)
1973	13	9(69.2%)	2(15.4%)	0	2(15.4%)
Number and percent of increase or decrease 1971-73	+4(44.4%)	+1(12.5%)	+1(100%)	0	+2

NOTE.—Blacks represented 25 percent of the total increase of four full-time minority employees from 1971 to 1973; Orientals 25 percent; and Spanish-surnamed Americans 50 percent.

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Full-time minority employees in the upper four job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	4	3(75%)	1(25%)	0	0
1972	4	3(75%)	1(25%)	0	0
1973	3	2(66.7%)	1(33.3%)	0	0
Number and percent of increase or decrease 1971–73	−1(25%)	−1(33.3%)	0	0	0

FULL-TIME EMPLOYEES OF ONE NEW BEDFORD TELEVISION STATION—(WTEV–TV, NEW BEDFORD)

All full-time employees

	Total	Male	Female	Minority
1971	73	58(79.5%)	15(20.5%)	4(5.5%)
1972	72	57(79.2%)	15(20.8%)	6(8.3%)
1973	76	56(73.7%)	20(26.3%)	8(10.5%)
Number and percent of increase or decrease 1971–73	+3(4.1%)	−2(3.5%)	+5(33.3%)	+4(100%)

NOTE.—Women represented 100 percent of the total increase of three full-time employees from 1971 to 1973 and minority group members also represented 100 percent.

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	44	41(93.2%)	3(6.8%)	2(4.6%)
1972	44	41(93.2%)	3(6.8%)	2(4.6%)
1973	47	41(87.2%)	6(12.8%)	6(8.5%)
Number and percent of increase or decrease 1971–73	+3(6.8%)	0	+3(100%)	+2(100%)

NOTE.—Women represented 100 percent of the increase of three full-time employees in the upper four job categories from 1971 to 1973 and minority group members represented 66.7 percent.

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	4	3(75%)	0	1(25%)	0
1972	6	4(66.6%)	0	1(16.7%)	1(16.7%)
1973	8	6(75%)	1(12.5%)	0	1(12.5%)
Number and percent of increase or decrease 1971–73	+4(100%)	+3(100%)	+1	−1(100%)	+1

Full-time minority employees in the upper 4 job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	2	2(100%)	0	0	0
1972	2	2(100%)	0	0	0
1973	4	4(100%)	0	0	0
Number and percent of increase or decrease 1971–73	+2(100%)	+2(100%)	0	0	0

NOTE.—Blacks represented 100 percent of the increase of 2 full-time minority employees in the upper 4 job categories from 1971 to 1973.

FULL-TIME EMPLOYEES OF TWO SPRINGFIELD TELEVISION STATIONS

All full-time employees

	Total	Male	Female	Minority
1971	107	89(83.2%)	18(16.8%)	4(3.7%)
1972	105	89(84.8%)	16(15.2%)	3(2.9%)
1973	101	83(82.2%)	18(17.8%)	6(5.9%)
Number and percent of increase or decrease 1971–73	−6(5.6%)	−6(6.7%)	0	+2(50%)

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	65	64(98.5%)	1(1.5%)	1(1.5%)
1972	64	63(98.4%)	1(1.6%)	0
1973	74	72(97.3%)	2(2.7%)	2(2.7%)
Number and percent of increase or decrease 1971–73	+9(13.9%)	+8(12.5%)	+1(100%)	+1(100%)

NOTE.—Women represented 11.1 percent of the increase of nine full-time employees in the upper four job categories from 1971 to 1973 and minority group members also represented 11.1 percent.

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	4	4 (100%)	0	0	0
1972	3	3 (100%)	0	0	0
1973	6	4(66.7%)	0	0	2(33.3%)
Number and percent of increase or decrease 1971–73	+2(50%)	0	0	0	+2

NOTE.—Spanish-surnamed Americans represented 100 percent of the total increase of 2 full-time minority employees from 1971 to 1973.

Full-time minority employees in the upper four job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	1	1(100%)	0	0	0
1972	0	0	0	0	0
1973	2	2(100%)	0	0	0
Number and percent of increase or decrease 1971–73	+1(100%)	+1(100%)	0	0	0

NOTE.—A black represented the increase of one full-time minority employee in the upper four job categories from 1971 to 1973.

FULL-TIME EMPLOYEES OF WHYN–TV (SPRINGFIELD)

All full-time employees

	Total	Male	Female	Minority
1971	51	43(84.3%)	8(15.7%)	2(3.9%)
1972	49	43(87.8%)	6(12.2%)	2(4.1%)
1973	48	42(87.5%)	6(12.5%)	3(6.3%)
Number and percent of increase or decrease 1971–73	−3(5.9%)	−1(2.3%)	−2(25%)	+1(50%)

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	30	29(96.7%)	1(3.3%)	0
1972	28	28(100%)	0	0
1973	41	41(100%)	0	1(2.4%)
Number and percent of increase or decrease 1971–73	+11(36.7%)	+12(41.4%)	−1(100%)	+1

NOTE.—Minority group members represented 9.1 percent of the increase of 11 full-time employees in the upper 4 job categories from 1971 to 1973.

All full-time minority employees

	Total	Black	Oriental	American Indian	American Spanish-surnamed
1971	2	2(100%)	0	0	0
1972	2	2(100%)	0	0	0
1973	3	2(66.7%)	0	0	1(33.3%)
Number and percent of increase or decrease 1971–73	+1(50%)	0	0	0	+1

NOTE.—A Spanish-surnamed American represented the increase of one full-time minority employee from 1971 to 1973.

Full-time minority employees in the upper four job categories

	Total	Black	Oriental	American Indian	American Spanish-surnamed
1971	0	0	0	0	0
1972	0	0	0	0	0
1973	1	1(100%)	0	0	0
Number and percent of increase or decrease 1971–73	+1	+1	0	0	0

NOTE.—A black represented the increase of one full-time minority employee in the upper four job categories from 1971 to 1973.

FULL-TIME EMPLOYEES OF WWLP–TV (SPRINGFIELD)

All full-time employees

	Total	Male	Female	Minority
1971	56	46(82.1%)	10(17.9%)	2(3.6%)
1972	56	46(82.1%)	10(17.9%)	1(1.8%)
1973	53	41(77.4%)	12(22.6%)	3(5.7%)
Number of percent and increase or decrease 1971–73	−3(5.4%)	−5(10.9%)	+2(20%)	+1(50%)

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	35	35 (100%)	0	1 (2.9%)
1972	36	35 (97.2%)	1 (2.8%)	0
1973	33	31 (93.9%)	2 (6.1%)	1 (3%)
Number and percent of increase or decrease 1971–73	−2 (5.7%)	−4 (11.4%)	+2	0

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	2	2 (100%)	0	0	0
1972	1	1 (100%)	0	0	0
1973	3	2(66.7%)	0	0	1(33.3%)
Number and percent of increase or decrease 1971–73	+1(50%)	0	0	0	+1

NOTE.—A Spanish-surnamed American represented the increase of 1 full-time minority employee from 1971 to 1973.

Full-time minority employees in the upper 4 job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	1	1(100%)	0	0	0
1972	0	0	0	0	0
1973	1	1(100%)	0	0	0
Number and percent of increase or decrease 1971–73	0	0	0	0	0

FULL-TIME EMPLOYEES OF ONE WORCESTER TELEVISION STATION—(WSMW-TV, WORCESTER)

All full-time employees

	Total	Male	Female	Minority
1971	49	41(83.7%)	8(16.3%)	2(4.1%)
1972	64	50(78.1%)	14(21.9%)	1(1.6%)
1973	37	28(75.7%)	9(24.3%)	0
Number and percent of increase or decrease 1971–73	−12(24.5%)	−13(31.7%)	+1(12.5%)	−2(100%)

Full-time employees in the upper four job categories

	Total	Male	Female	Minority
1971	44	41(93.2%)	3(6.8%)	1(2.3%)
1972	55	50(90.9%)	5(9.1%)	1(1.8%)
1973	33	28(84.8%)	5(15.2%)	0
Number and percent of increase or decrease 1971–73	−11(25%)	−13(31.7%)	+2(66.7%)	−1(100%)

All full-time minority employees

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	2	2(100%)	0	0	0
1972	1	1(100%)	0	0	0
1973	0	0	0	0	0
Number and percent of increase or decrease 1971–73	−2(100%)	−2(100%)	0	0	0

Full-time minority employees in the upper four job categories

	Total	Black	Oriental	American Indian	Spanish-surnamed American
1971	1	1(100%)	0	0	0
1972	1	1(100%)	0	0	0
1973	0	0	0	0	0
Number and percent of increase or decrease 1971–73	−1(100%)	−1(100%)	0	0	0

F.C.C. 73-1301

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON D.C. 20554

In Re Application of VIDEO LINK, LTD., SPRINGHILL TOWNSHIP, PA. For Certificate of Compliance.	CAC-1559 PA97A

MEMORANDUM OPINION AND ORDER

(Adopted December 12, 1973; Released December 28, 1973)

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

1. On November 15, 1972, Video Link, Ltd., filed an application for a certificate of compliance to begin cable television service at Springhill Township, Pennsylvania.[1] Video proposes to carry the following television broadcast signals:

KDKA-TV (CBS, Channel 2), Pittsburgh, Pennsylvania.
WTAE-TV (ABC, Channel 4), Pittsburgh, Pennsylvania.
WIIC-TV (NBC, Channel 11), Pittsburgh, Pennsylvania.
WQED (Educ., Channel 13), Pittsburgh, Pennsylvania.
WQEX (Educ., Channel 16), Pittsburgh, Pennsylvania.
WPGH-TV (Ind., Channel 53), Pittsburgh, Pennsylvania.
WJAC-TV (NBC, Channel 6), Johnstown, Pennsylvania.
WDTV (CBS, Channel 5), Weston, West Virginia.
WTRF (NBC, Channel 7), Wheeling, West Virginia.
WSTV-TV (CBS/ABC, Channel 9), Steubenville, Ohio.
WBOY-TV (NBC, Channel 12), Clarksburg, West Virginia.
WWVU (Educ., Channel 24), Morgantown, West Virginia.
WQHO (CP, Channel 40), Greensburg, Pennsylvania.
WKBF-TV (Ind., Channel 61), Cleveland, Ohio.
WUAB (Ind., Channel 43), Lorain, Ohio.

Springhill Township, Pennsylvania is located wholly outside all major and smaller television markets.

2. On January 22, 1973, Cover Broadcasting, Inc., licensee of Station WJNL-TV, Johnstown, Pennsylvania, filed an opposition to Video's application. However, contrary to Section 76.27 of the Commission's Rules, WJNL-TV failed to serve its opposition on Video.[2] Cover Broadcasting objects to Video's proposed carriage of Ohio Stations WKBF-TV and WUAB and, in support of its objection, asserts: that the programming offered by Pennsylvania and nearby West Virginia stations would be more relevant to the interests of Pennsylvania residents than the programming of Ohio stations; that if one signal from a specific market is to be carried by Video, then all other signals in the

[1] Springhill Township has a population of 3,001. The proposed cable system will have a 20-channel capacity. Of these channels, 15 will be used for television signal carriage, one for automated program originations, and one for non-automated program originations.
[2] Subsequently, Video was served with a copy of the objection.

same market should receive equal treatment; and, that the competition created by the carriage of the Ohio stations would have an adverse economic impact on Station WJNL–TV.

3. We must reject Cover Broadcasting's objections. Since Springhill Township is located wholly outside all television markets, Video's carriage proposal is consistent with Section 76.57 of the Commission's Rules. Pursuant to Section 76.57(b) a cable system, after providing for carriage of certain required stations, may carry any additional television signals. Since choice of such signals is at a cable system's discretion, while recognizing that Cover Broadcasting's views of relevance or equal treatment may be useful, we will not substitute its judgment or our own for Video's. And WJNL–TV has made no showing that Video's carriage of the Ohio stations would result in adverse economic impact. Consequently, no evidence has been presented which would justify disturbing Video's carriage plans.

4. Although not raised by the objections, it is clear that Video's franchise is not entirely consistent with Section 76.31 of the Rules. Specifically, Video's franchise for Springhill Township was awarded on June 28, 1971, for an initial term of 25 years. Additionally, the franchise contains no assurance that it was awarded after a full public proceeding affording due process (Section 76.31(a)(1)), nor does it contain provisions for significant construction in one year and the equitable extension of service thereafter (76.31(a)(2)) or provide for a local business office for the resolution of service complaints (76.31(a)(5)). However, the applicant gives assurances that the franchise was awarded after "the Township held hearings and investigated all aspects of Video's qualifications prior to issuing a franchise" and that "all appropriate publication procedures were followed". The applicant also makes assurances that all of the remaining franchise deficiencies will be corrected.[3] Since the franchise was granted prior to March 31, 1972, only substantial consistency with the franchise provisions of Section 76.31 need be demonstrated at this time, according to the note to Section 76.13(a)(4). We find Video's franchise to be substantially consistent, and we will grant a certificate of compliance until March 31, 1977. E.g. *Melhar Corp.*, FCC 72–1145, 38 FCC 2d 553.

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 informal objection filed January 23, 1973, by Cover Broadcasting, Inc., IS DENIED.

IT IS FURTHER ORDERED, That, the "Application for Certificate of Compliance" (CAC–1559), filed by Video Link, Ltd., IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[3] We note that Section 2 of the franchise requires that the "licensee shall be subject to any and all regulations either presently in effect or which shall become so in the future by the Federal Communications Commission."

F.C.C. 73-1186

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
THE WESTERN CONNECTICUT BROADCASTING CO. (WSTC), STAMFORD, CONN.	Docket No. 19872
Has: 1400 kHz, 250 W, 1 kW-LS, U	File No. BR-1150
For Renewal of License	
RADIO STAMFORD, INC., STAMFORD, CONN.	Docket No. 19873
Requests: 1400 kHz, 250 W, 1 kW-LS, U	File No. BP-19162
For Construction Permit	

MEMORANDUM OPINION AND ORDER

(Adopted November 14, 1973; Released November 21, 1973)

BY THE COMMISSION:

1. The Commission has before it for consideration the above-captioned applications which are mutually exclusive in that they seek to use the same frequency in the same community.

2. On October 17, 1973, the Commission adopted its Decision (FCC 73-1074) in Docket No. 19043 declining to revoke the licenses for WSTC (AM and FM), while at the same time ordering Western Connecticut to forfeit the sum of $10,000.[1] On April 1, 1972, during the pendency of the revocation proceeding, the license for WSTC expired. Since the application of Radio Stamford, Inc., was filed on March 1, 1972, it is timely and thus entitled to comparative consideration with the application for renewal.[2]

3. In our aforementioned Decision we found that Western Connecticut's repeated violations of Section 315 of the Act, in the absence of any mitigating factors, warranted revocation. Our conclusion, however, that the licensee's overall programming was sufficient to tip the scales against revocation and permit imposition of the maximum forfeiture was subject to the specific caveats set out in paragraph 32 of the Decision, namely, that the ruling (i) resolves only the question of revocation; (ii) does not establish or forecast our position with respect to any policy on programming standards that may ultimately result from the Commission's inquiry into the matter of "superior past pro-

[1] Issues raised by the show cause order were whether the licensee censored broadcast material of political candidates, afforded equal opportunities to candidates, improperly maintained records and logs, lacked candor in responding to Commission inquiries and possessed the requisite qualifications to remain a licensee. Subsequently, the Review Board added an issue to determine whether the licensee's programming had been meritorious. *Western Connecticut Broadcasting Company*, 26 FCC 2d 1019 (1970).

[2] Previous requests by Radio Stamford to have its application for construction permit consolidated in the WSTC proceeding were denied by the Commission. *Radio Stamford, Inc.*, 35 FCC 2d 776, reconsideration denied 39 FCC 2d 84 (1973). Subsequently, Western Connecticut entered an appeal before the U.S. Court of Appeals for the District of Columbia Circuit in Case No. 73-1201 which is still pending.

gramming" which might give a renewal applicant a "plus of major significance" in comparison with a competing applicant (Docket No. 19154, 31 FCC 2d 443 (1971)); and (iii) does not, by virtue of our determination on the programming issue, necessarily create for the licensee a preferred position in any forthcoming comparative proceeding involving its renewal application. Finally, we noted that the revocation proceeding would become part of the licensee's file and may be considered when action is taken on its renewal. In light of these caveats, and the fact that ultimately all licensees must be held accountable for their performance during their previous license term, the matters raised during the revocation proceeding may be considered within the context of the comparative issue specified below. Moreover, Western Connecticut is bound by the record in Docket No. 19043 and the resolution of issues in that proceeding is *res judicata* as to the licensee.

4. The president and largest single stockholder (22 percent) of Radio Stamford is Alphonsus J. Donahue, formerly president of Donahue Sales Corporation. That company is now a division of Textron, Inc., and is managed by Mr. Donahue. On March 25, 1970, the Federal Trade Commission in Docket No. C–1713, issued a consent order directing Donahue Sales Corporation to cease and desist from engaging in certain price-fixing practices in connection with the sale of packaged zippers, spooled thread, and other products for the home sewing market. Attached to the order was a complaint alleging specific violations of Federal Trade Commission Act (Title 15 U.S.C. § 41). The complaint was drafted by the Bureau of Restraint of Trade and would have been presented to the F.T.C. for adoption had not Donahue Sales Corporation entered into the consent agreement. Although this Commission is not charged with the enforcement of anti-trust laws, if an applicant or a principal thereof has been involved in unlawful practices, an analysis of the substance of these practices must be made in order to determine the ability of the applicant to use the proposed facilities in the public interest. *Uniform Policy as to Violation by Applicants of Laws of the United States*, 1 RR 91:495 (1951). Thus, in keeping with our long-standing policy, an appropriate issue will be included.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, 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 facts and circumstances relating to trade practices engaged in by Donahue Sales Corporation which resulted in the issuance by the Federal Trade Commission of a consent order in Docket No. C–1713 and whether such practices reflect upon the basic and/or comparative qualifications of Radio Stamford, Inc., to be a licensee of the Commission.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

7. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence and the burden of proof under Issue #1 shall be on Radio Stamford, Inc.

8. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants 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.

9. 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,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1345

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WESTERN WILDFLOWER CORP., ZAPATA, TEX. For Certificate of Compliance	CAC-1796 TX307

MEMORANDUM OPINION AND ORDER

(Adopted December 19, 1973; Released January 4, 1974)

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

1. On January 10, 1973, Western Wildflower Corporation filed an application for a certificate of compliance in which it proposes to operate a new cable television system at Zapata, Texas, an unincorporated community located outside all television markets. The applicant proposes to carry the following television signals:

KENS-TV (CBS, Channel 5), San Antonio, Texas.
KSAT-TV (ABC, Channel 12), San Antonio, Texas.
KGNS-TV (NBC, Channel 8), Laredo, Texas.
KVTV (CP, Channel 13), Laredo, Texas.
KGBT-TV (CBS/ABC, Channel 4), Harlingen, Texas.
KRGV-TV (NBC/ABC, Channel 5), Weslaco, Texas.
XEFB-TV (Foreign language, Channel 3), Monterrey, Mexico.
XEJ-TV (Foreign language, Channel 6), Monterrey, Mexico.
XHX-TV (Foreign language, Channel 10), Monterrey, Mexico.

The proposed signal carriage is consistent with the cable television rules, and the application is unopposed.[1]

2. Western seeks partial waiver of the franchise requirement of Section 76.31 of the Rules because it contends that unincorporated communities in Texas lack the authority to issue a franchise or other appropriate authorization which contains all of the required recitations and provisions outlined in Section 76.31. In support of its contention, Western furnishes a letter it received from Mr. Victor C. Woods, County Attorney of Zapata County. The letter states in pertinent part:

> Please be advised that Zapata County, the Commissioners' Court of Zapata County, Texas has no authority under the Constitution of the State of Texas . . . nor under the general statutes . . . to specify or approve rates.

Accordingly, Western 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 (1972), which

[1] Zapata has a population of 2,000. The system will have 12-channel capacity, of which seven channels will be used for carriage of television broadcast signals and one channel for automated time-weather information.

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.

3. In support of its request, Western submits a "Contract and Agreement" it received from the County of Zapata for the right of way to construct a cable system. The Agreement specifies procedures for resolution of complaints and the establishment of a local business office. In addition Western has made the following representations to the Commission:

(a) In accordance with Rule § 76.31(a)(2), Western Wildflower will accomplish significant construction (at least 20% of its service area) within one year after receiving Commission certification, and shall equitably and reasonably extend energized trunk cable to at least 20% of its service area each year thereafter;

(b) Western Wildflower will apply for a new certificate of compliance within fifteen (15) years after the grant of its first certificate of compliance, or will do so earlier if so specified by the Commission;

(c) Western Wildflower's initial rates will be as follows:

Residents of Zapata Township:	
Monthy service	$6.95
Additional outlet	1.50
Installation fee	19.95
Residents outside Zapata Township:	
Monthly service	8.45
Additional outlet	1.50
Installation fee	19.95

These initial rates will be in effect for a period of at least three years. Any later increase in rates will be published locally at least thirty days before they become effective, and will be based upon industry standards and the revenue requirements of the system;

(d) Western Wildflower will comply with all pertinent federal, state and local laws. It will amend its operations and commitments to comply with Commission standards within one year of any modifications adopted by the Commission or at the time it applies for a new certificate of compliance, whichever occurs first. Western has agreed to pay the County an annual fee for use of the County's rights-of-way in the amount of 2% of subscriber revenues, exclusive of revenue received from installation charges. Finally, Western submits a letter from Mr. Angel A. Flores, of the Commissioner's Court of Zapata County in which it is stated that the Commissioner's Court considered the legal, character, financial, technical, and other qualifications of Western Wildflower Corporation before awarding the "Contract and Agreement."

4. We believe Western has submitted an "acceptable alternative proposal" which assures compliance with the substance of Section 76.31 of the Rules. *Coastal Cable, Inc.*, FCC 73-631, 41 FCC 2d 857. Therefore, a certificate of compliance will be issued until March 31, 1977, subject to the same conditions that we have imposed in other similar

cases:[2] This grant is made subject to any further orders of the Commission designed to resolve general problems inherent in nonfranchised cable operations, or to address any special problems that may be brought to the Commission's attention involving cable operation in the subject community.

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

Accordingly, IT IS ORDERED, That the application for certificate of compliance (CAC–1796), filed by Western Wildflower Corp. IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[2] E.g., *Mahoning Valley Cablevision, Inc.*, FCC 73–347, 40 FCC 2d 439.

F.C.C. 73–1235

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
WGOE, INC.	Docket No. 19757
For Renewal of License of WGOE, Richmond, Va.	File No. BR–3631
CREST BROADCASTING CORP.	Docket No. 19758
For Renewal of License of WEYE, Sanford, N.C.	File No. BR–2739

ORDER AND NOTICE OF APPARENT LIABILITY

(Adopted November 28, 1973; Released December 4, 1973)

BY THE COMMISSION:

1. We have before us a petition filed October 30, 1973, by Crest Broadcasting Corporation (Crest) seeking to have a forfeiture provision specified against it in the above-captioned consolidated proceeding. In its petition, Crest points out that the Review Board has enlarged issues in this proceeding to include, among other matters, an issue dealing with alleged violations of Sections 73.87 and 73.111(a) of our Rules;[1] that some of these alleged violations may give rise to the assessment of monetary forfeitures, pursuant to Section 503(b) of the Communications Act of 1934, as amended; that the Review Board in enlarging the hearing issues in this proceeding has not provided for the imposition of forfeitures in this respect; and that, consequently, the proceeding should be modified to include an appropriate Notice of Apparent Liability for any alleged violation for which a monetary forfeiture may be assessed.

2. We believe that a grant of the instant petition would be in keeping with the policy enunciated in *WPRY Radio Broadcasters, Inc.*, 23 FCC 2d 969, FCC 70–650, released June 24, 1970, where the Commission stated that "in every case designated for hearing involving . . . denial of renewal for alleged violations which also come within the purview of Section 503(b) of the Act, [the Commission] shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action." The action taken herein should not be construed as indicating what the initial or final disposition of this case should be. That judgment will be made on the particular facts of this case after a full evidentiary inquiry.

3. Accordingly, IT IS ORDERED, That the petition for specification of forfeiture provision filed October 30, 1973, by Crest Broadcasting Corporation IS GRANTED.

[1] Memorandum Opinion and Order, FCC 73R–318, released October 12, 1973.

4. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an order denying the captioned application for renewal of license of Station WEYE, it shall also be determined whether in light of the evidence adduced pursuant to the hearing issues added by the Review Board concerning alleged violations of Sections 73.87 and 73.111(a) of the Commission's Rules, whether Crest Broadcasting Corporation should be assessed a forfeiture in the amount of $10,000 or some lesser amount pursuant to Section 503(b) of the Communications Act of 1934, as amended.

5. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this Order and Notice of Apparent Liability by Certified Mail—Return Receipt Requested—to Crest Broadcasting Corporation, licensee of Station WEYE, Sanford, North Carolina.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*