

FCC 67D-11

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Application of MAXWELL ELECTRONICS CORP., DALLAS, TEX. For Construction Permit	}	Docket No. 16389 File No. BPCT-3489
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APPEARANCES

W. H. Borghesani, Jr., Esq., and *Joseph F. Hennessey, Esq.*, for Maxwell Electronics Corp.; *Peter Shuebruk, Esq.*, *Benito Gaguine, Esq.*, and *Herbert Schulkind, Esq.*, for D. H. Overmyer Communications Co., Inc., and *John B. Letterman, Esq.*, for the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER JAY A. KYLE

(Effective April 17, 1967, Pursuant to Section 1.276)

PRELIMINARY STATEMENT

1. This proceeding involves the application of Maxwell Electronics Corp. (Maxwell) for a construction permit for a new television broadcast station to operate on channel 33 at Dallas, Tex.

2. Originally Maxwell's application was mutually exclusive with that of D. H. Overmyer Communications Co., Inc. (Overmyer), and Grandview Broadcasting Co. for construction permits for channel 29 at Dallas. The application of the latter, upon its petition, was dismissed by order, released February 2, 1966 (FCC 66M-169). As a result of rulemaking in docket No. 16763, released December 16, 1966, the Commission eliminated channel 29 at Dallas and substituted channel 33 in lieu thereof and added channel 27 at Dallas. The Commission provided that either or both applicants could petition to amend their respective applications to reflect channel 33 in lieu of channel 29 and remain in hearing status. Accordingly, Maxwell amended its application to show channel 33 and Overmyer amended its application to reflect channel 27 and was returned to the processing line.

3. In the order of designation the Commission specified four issues including an air hazard issue against Maxwell. However, the Review Board granted Maxwell's petition to delete the air hazard issue in a memorandum opinion and order (FCC 66R-54), released February 8, 1966. Therefore, because of the amended applications the other issues specified by the Commission are not now applicable. However, the Review Board on July 21, 1966, upon petition of Overmyer, added